Physical Punishment of Children - Legislation in Various Countries

Executive summary
- Most countries allow parents or guardians to physically punish their children
- In some countries, review has led to legislative codification of acceptable degrees of punishment, rather than prohibition
- Reform of physical punishment legislation has sometimes led to a complete ban on physical punishment. This has happened in sixteen countries and two dependent territories
- Sweden was the first country to ban physical punishment of children, in 1979.

Introduction
This paper provides examples of some states and countries’ laws on the physical punishment (“corporal punishment”; “smacking”) of children. It is not a comprehensive list, covering instead a sample of countries with notable legislation. It describes the situation of physical punishment laws within each jurisdiction, as well as the legislative instruments. Some background information on the passage of legislation is also provided.

Many countries have considered a ban on the physical punishment of children. Sixteen countries currently prohibit corporal punishment of children in all settings. These are: Austria (1989); Bulgaria (2000); Croatia (1998); Cyprus (1994); Denmark (1997); Finland (1983); Germany (2000); Greece (2006); Hungary (2005); Iceland (2003); Israel (2000); Norway (1987); Latvia (1998); Romania (2004); Sweden (1979) and Ukraine (2001). The same situation applies in the dependent territories of Pitcairn Islands (UK) (2003) and Spitzbergen (Norway - Svalbard). In addition, high court decisions or constitutional changes in Italy, Belgium and Portugal have moved these countries closer to the prohibition of physical punishment of children by parents.

International Conventions
International conventions have influenced physical punishment legislation in countries that have ratified them. The United Nations’ (UN) Convention on the Rights of the Child (UNCROC), Article 19.1 was adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 on 20 November 1989. It mandates:

“...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, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child”.  

There has been some discussion, however, whether the Convention applies to “conventional smacking”.  

For example, New Zealand ratified UNCROC in May 1993, the 131st country to do so, but reserved the right to interpret and apply the convention as it considered appropriate. New Zealand’s initial report to the UN on UNCROC therefore stated that parents had the right to smack their children for the purpose of correction, but the use of unreasonable force against a child was a criminal offence.  

Although many countries have legislated against corporal punishment, most of the approximately 190 parties to the Convention have not. The UN estimates that 2.4 percent of the world’s children cannot be physically punished in any setting due to prohibiting legislation.

Scotland

The common law in Scotland, until recently, allowed parents the right of “reasonable chastisement” in disciplining their children. Parents were able to administer moderate physical punishment to their children without being liable for damages or criminal conviction for assault.

The Scottish Executive felt that the defence of “reasonable chastisement” needed to be updated but was not inclined to prohibit all smacking and other forms of physical rebuke. Its determination was to look for a “common sense distinction to be made between the sort of mild physical rebuke which is normal in families, and the beating of children”. It decided that the law needed to be clarified to ensure that it properly reflected this distinction.

The Executive consulted on the following questions:

- within the context of a modern family policy, in a responsible society, where should the line be drawn as to what physical punishment of children is acceptable within the family setting?
- how to achieve that position in law?

The consultation was followed up by research with Scottish families to determine “normal practices”. In all, 220 responses were received from the consultation. These fell into three classes:
• 34 percent of respondents were opposed to any physical punishment and called for a total ban
• 17 percent supported the right of parents to discipline their children as they see fit, and were opposed to any change in the law
• 43 percent were prepared to consider the Executive’s proposals, albeit often reluctantly.

The 2003 legislative review culminated in the passage of the Criminal Justice (Scotland) Act (2003). Parents retained the right to physically punish children, although certain practices were prohibited, such as: shaking a child; hitting on the head; using a belt, cane, slipper, wooden spoon or other implement. \(^{10}\)

Further, the courts, when determining the legality of physical punishment administered, were empowered to take certain factors into consideration, such as:

• the child’s age
• what was done to the child, for what reason and what the circumstances were
• the duration of the punishment and the frequency
• how it affected the child (physically and mentally)
• other issues personal to the child, such as their gender and state of health.

**Sweden**

In 1957, Sweden removed the section of the Penal Code that allowed parents to use physical punishment to reprimand children, thereby providing children with the same protection from assault as adults. \(^{11}\) This did not completely extinguish parents’ rights to use physical punishment as the Parents’ Code still contained a paragraph permitting this practice. It allowed parents to use mild forms of physical discipline that would not constitute assault under the Penal Code.

The inconsistency of these two sets of laws was eliminated in 1966, when the parental right to use corporal punishment was removed from the Parents’ Code. However, there was no provision expressly prohibiting corporal punishment.

In 1979 Sweden prohibited all physical punishment of children by a provision added to their Parenthood and Guardianship code. This was amended in 1983 to express the rights of children to be:

“...treated with respect for their person and individuality and may not be subjected to physical punishment or other injurious or humiliating treatment”.

Further, legislation passed in 1982 equated assault in private places, e.g. in the home, with assault anywhere else. Until then, assault (except in aggravated cases) was a "complainable crime". The victim had to personally report the offence to the police if the assault had occurred in a private place, as was most often the case when women and children were assaulted. \(^{12}\)

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\(^{11}\) Taylor, 2005.

Norway

Norway prohibited corporal punishment in 1987 through an amendment to 1981 Parent and Child Act to read: “...The child shall not be exposed to physical violence or to treatment which can threaten his physical or mental health”.

No sanctions were attached to the legislation and its principal aim was to effect social change. Prosecutions can occur under the Criminal Code, however, provided there is bodily injury.\textsuperscript{13} A Supreme Court decision in April 2006 interpreted the law as allowing “safe slaps”\textsuperscript{14}

Canada

In Canada, parents and teachers are provided a defence in law against the use of reasonable force to discipline a child under Section 43 of the Criminal Code. Section 43 reads:

“...Every schoolteacher, parent or person standing in the place of a parent is justified in using force by way of correction toward a pupil or child, as the case may be, who is under his care, if the force does not exceed what is reasonable in the circumstances”.\textsuperscript{15}

There have been several legislative attempts to abolish corporal punishment over the past decade, all in the form of private members’ bills in the Senate or the House of Commons. The legislation stands mostly as it was originally enacted in 1892.

In 2004 the Supreme Court issued a judgement on whether s.43 was unconstitutional. Six of the nine justices concluded that the provision does not violate the Canadian constitution, as it does not infringe a child’s right to equality, and does not constitute cruel and unusual treatment or punishment. They agreed that it protects only parents, schoolteachers and persons who have assumed all of the obligations of parenthood.

Further, it maintains a risk of criminal sanction if force is used for non-educative or non-corrective purposes, and limits the degree of force that may be used. The child must have the capacity to understand and benefit from the correction, so that s.43 does not justify force against children under two years of age or those with particular disabilities.

The words “reasonable force under the circumstances” in s.43 mean that the force must be transitory and trifling, must not harm or degrade the child, and must not be based on the gravity of the wrongdoing (the justices believed that it is improper to retrospectively focus on the gravity of a child’s wrongdoing because this invites a punitive rather than corrective focus\textsuperscript{16}). Reasonableness further implies that force may not be administered to teenagers, (as it is believed this can induce aggressive or antisocial behaviour), may not involve objects such as rulers or belts, and may not be applied to the head.

\textsuperscript{13} Taylor, 2005. Ibid.
\textsuperscript{14} Global Initiative to End All Corporal Punishment of Children, 2006. Ibid.
One dissenting justice cited a lack of judicial consensus on what constitutes force that is "reasonable under the circumstances".

The concept of "reasonable chastisement" has also been the subject of legislative review in England and Wales. The United Kingdom (UK) Parliament consulted on the issue in response to a finding of a case before the European Court of Human Rights (ECHR) in 1998, brought by a litigant ("A"), who had suffered a beating from his stepfather with a garden cane. Both the UK Government and the European Commission on Human Rights, which had referred the case to the ECHR, accepted that, in this case, there had been a violation of Article 3 of the European Convention on Human Rights (ECHR).17

The third article of the European Convention on Human Rights, which came into force in September 1950, states: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment".18 The ECHR ruled that, because of the way in which the defence of "reasonable chastisement" was applied, UK law had failed to protect "A" from "inhuman or degrading treatment" in the form of severe beatings, in contravention of the ECHR. In 2004, the Government issued a consultation paper in order to seek ways to clarify the law, which would "reflect the view that violence against children is unacceptable and promote better protection for children without getting in the way of normal family life".19 The Government ruled out banning smacking, however, consulting instead on four questions:20

- what, if any, factors...should the law require a Court to consider when determining whether the physical punishment of a child constitutes 'reasonable chastisement'?
- are there any forms of physical punishment which should never be capable of being defended as 'reasonable'?
- should we restrict the defence of reasonable chastisement so that it may be used only by those charged with common assault, and not by those charged with causing actual bodily harm, or more serious assaults?
- who should be able to claim the defence of 'reasonable chastisement'?

The Department of Health announced that seventy percent of members of the public who responded to the consultation felt that the law did not need to change, and the Government concurred. However, an unfavourable opinion of the defence of "reasonable chastisement" by the UN in relation to UNCROC, pressure from the Welsh Assembly, pressure over high-profile child abuse cases and developments in UK Human Rights legislation and case law may have been contributing factors to the House of Lords' insertion of an "equal protection from assault" clause to abolish "reasonable chastisement" into the Children Bill, which was before the Lords.

The House of Commons defeated the Lords’ “equal protection from assault” clause by 424 votes to 75. The resulting legislation, Section 58 of the Children Act, 2004\textsuperscript{21}, does not therefore prohibit “reasonable chastisement” but any corporal punishment that leaves a physical mark, such as visible bruising, grazes, scratches, minor swellings or cuts is no longer lawful.\textsuperscript{22}

**Australia**

In Australia, the defence of “lawful correction” or “reasonable chastisement” for parents is available in all states and territories other than New South Wales.\textsuperscript{23}

### Table 1: Defence of “reasonable chastisement” in Australian State and territory law

<table>
<thead>
<tr>
<th>Australian Capital Territory</th>
<th>Section 124, ACT Child Welfare Ordinance, 1957</th>
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</thead>
<tbody>
<tr>
<td>Northern Territory</td>
<td>Section 27, Northern Territory Criminal Code Act</td>
</tr>
<tr>
<td>Queensland</td>
<td>Section 280, Queensland Criminal Code Act, 1899</td>
</tr>
<tr>
<td>South Australia</td>
<td>Section 39 and subsequent amendments, South Australia Criminal Law Consolidation Act, 1935</td>
</tr>
<tr>
<td>Tasmania</td>
<td>Section 50, Tasmania Criminal Code Act</td>
</tr>
<tr>
<td>Western Australia</td>
<td>Section 257, WA Criminal Code Act, 1913</td>
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<tr>
<td>Victoria</td>
<td>Common law</td>
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</tbody>
</table>

**New South Wales**

Until recently, the common law defence of reasonable chastisement applied in New South Wales (NSW).\textsuperscript{24} The defence applied where an adult who was a parent or a person acting in the role of a parent was charged with a statutory offence of assault under the Crimes Act, 1900. The defence could also be presumed to apply in relation to offences committed under section 227 of the Children and Young Persons (Care and Protection) Act, 1998. This was the central plank of child protection legislation in NSW, which did not specifically prohibit, or permit, certain forms of corporal punishment.\textsuperscript{25}

In 2002, partially in response to an unfavourable assessment of child protection legislation by the UN in relation to UNCROC, the NSW legislature passed the Crimes Amendment (Child Protection – Physical Maltreatment) Act (2001) which inserted section 61AA into the Crimes Act (1900).

Under the new section, the defence of “lawful correction” does not apply in the circumstances where a parent applies any physical force:

(a) to any part of the head or neck of the child, or
(b) to any other part of the body of the child in such a way as to be likely to cause harm to the child that lasts for more than a short period.

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Further, it provides that physical punishment of a child by a parent or carer is only lawful if the application of physical force is reasonable having regard to the age, health, and maturity of the child, and the nature of the alleged misbehaviour.\footnote{Roth, L. 2005. “Children’s Rights in NSW”. Parliament of New South Wales Library Briefing Paper 2/2005. \url{http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/0/3dc046793e55a4a0ca25701c001b5d7e/$FILE/children's%20rights%20and%20index.pdf} accessed 2 March 2007.}

The Act was passed with the support of the Government and Opposition, as well as support from medical, legal and child protection experts, and independent bodies such as the New South Wales Commission for Children and Young People and the Community Services Commission.

Suggestions for further reading / links


Global Initiative to End All Corporal Punishment of Children. “States with Full Abolition”. \url{http://www.endcorporalpunishment.org/pages/frame.html}

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