

# **EXAMINING THE RIGHTS OF CHILDREN: A COMPARATIVE ANALYSIS OF CORPORAL PUNISHMENT IN SRI LANKA AND INDIA**

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## **ABSTRACT**

Corporal punishment, the use of physical force as a disciplinary measure against children, remains deeply entrenched and widespread in societies globally, exerting profound and far-reaching effects on children's physical, emotional, and psychological well-being. Recognizing the gravity of this issue, this research article endeavours to conduct an extensive comparative analysis of the existing legal frameworks pertaining to corporal punishment in two South Asian nations, Sri Lanka, and India. The central research problem revolves around understanding the complex dynamics that perpetuate corporal punishment within these two countries and formulating necessary recommendations to overcome the challenges faced by Sri Lanka in effectively addressing this pressing issue. The approach of this study involves conducting a qualitative analysis primarily based on an examination of existing literature. This analysis encompasses the scrutiny of primary legal sources, including constitutional provisions, Acts and Ordinances, conventions, and precedential case laws. In addition, secondary sources such as journal articles, books, and policy papers are incorporated to augment and enrich the research findings. The research outcomes indicate that, notwithstanding the legal ban, the practice of corporal punishment which persists in Sri Lanka is primarily influenced by a complex interplay of socio-cultural and economic factors. In conclusion, the article underscores the immediate necessity for the robust enforcement

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of existing laws, coupled with awareness campaigns, teacher training, parental education, and enhanced monitoring mechanisms, to protect the rights of children and promote non-violent disciplinary methods in these diverse cultural landscapes

**Key words:** *Child Rights, Corporal Punishment, Legal Perspectives, Sri Lanka & India*

## 1. INTRODUCTION

“A curry that is not stirred and a child that is not hit are both spoilt.”

This age-old Sri Lankan proverb, laden with cultural significance, offers a glimpse into a deeply ingrained and persistent issue within Sri Lankan society: the normalization of corporal punishment. It is characterized by the use of physical force as a disciplinary measure against children, transcends borders and is, unfortunately, a global concern. Its impact, however, extends far beyond the immediate physical sensations it inflicts. Instead, it reaches deep into the physical, emotional, and psychological well-being of children, shaping their development and leaving lasting imprints on their lives.<sup>1</sup>

In light of the seriousness of this matter, this research article aims to conduct a comprehensive comparative analysis, delving into the intricate legal frameworks that surround corporal punishment in two prominent South Asian nations: Sri Lanka and India. These two nations, while sharing a geographical proximity, exhibit unique socio-cultural landscapes that shape their approaches to disciplining children. This study's central research problem revolves around deciphering the complex dynamics that

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<sup>1</sup> C Aloysius, 'Corporal Punishment Causes injuries and physical impairments', *Sunday Observer*, 28 November 2021, available at: <https://www.sundayobserver.lk/2021/11/28/health/corporal-punishment-causes-injuriesandphysicalimpairments#:~:text=Corporal%20punishment%20includes%20any%20action.form%20of%20violence%20against%20children> (Accessed 1 August 2023).

sustain the practice of corporal punishment within these respective countries, while also crafting essential recommendations to overcome the multifaceted challenges faced by Sri Lanka in effectively addressing this pressing issue.

## **2. RESEARCH OBJECTIVES**

The research objectives for the study on corporal punishment in Sri Lanka and India can be framed as follows:

- To critically examine and compare the legal frameworks related to corporal punishment in Sri Lanka and India.
- To assess the effectiveness of existing legal prohibitions on corporal punishment in ensuring children's rights and well-being.
- To propose recommendations for strengthening the law enforcement mechanisms aimed at safeguarding children from corporal punishment in Sri Lanka.

These objectives will guide the research and help in achieving a thorough understanding of corporal punishment issues in Sri Lanka and India. The author expects that this study will serve as a source of enlightenment and consciousness, offering valuable guidance to policymakers and educators, with the ultimate aim of nurturing the forthcoming generations of Sri Lanka.

## **3. METHODOLOGY**

The study's methodology involves a qualitative analysis, primarily based on a meticulous examination of existing literature. This analysis encompasses the critical review of primary legal sources, including constitutional provisions, Acts and ordinances, international conventions, and case law. Furthermore, secondary sources, such as journal articles,

books, and policy papers, are thoughtfully incorporated to complement and enrich the research findings.

#### **4. INTERNATIONAL HUMAN RIGHTS STANDARDS ON CORPORAL PUNISHMENT OF CHILDREN**

The protection of children has been a matter of global concern dating back to the early twentieth century when there were no established standards for safeguarding children, particularly in industrialized nations. During this era, it was commonplace for children to toil alongside adults in unsanitary and perilous conditions. However, as a deeper comprehension, the children's developmental needs, coupled with a growing recognition of the inherent injustice in their circumstances, emerged as a movement advocating for their improved protection which (gained momentum) was phenomenal. The United Nations Human Rights Commission identified the imperative need for a convention aimed at the welfare and protection of children. This culminated in the adoption of the Convention on the Rights of the Child (CRC) in 1989.<sup>2</sup> Prior to this momentous convention, the foundational framework of international human rights, encompassing the Universal Declaration of Human Rights (UDHR) from 1948, as well as the two International Covenants on Civil and Political Rights (ICCPR) and on Economic, Social, and Cultural Rights (ICESCR) established in 1966, Convention Against Torture (CAT) emphasized the inherent entitlement of all individuals to equal protection under the law and stressed the paramount significance of preserving human dignity and physical well-being. The subsequent implementation of the CRC further required the states to prohibit and eradicate all forms of cruel or degrading punishment, including corporal punishment, grounded in the fundamental principle of

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<sup>2</sup> Considered the importance of providing special attention to children, as emphasized in both Geneva Declaration of the Rights of the Child in 1924 and the Declaration of the Rights of the Child passed by the General Assembly on November 20, 1959.

respecting the dignity of every person. This principle remains a cornerstone within the realm of international human rights law.

CRC recognizes<sup>3</sup> the necessity of maintaining discipline in schools when required and explicitly affirms:

States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

It is imperative to interpret this provision in conjunction with CRC Article 19. Article 19 stipulates that:

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.

Essentially, while Article 28 focuses on school discipline, it should not be considered in isolation but rather in tandem with the comprehensive framework outlined in Article 19. This provision emphasizes the important obligation to safeguard children from any type of physical or psychological harm, regardless of whether it occurs within the educational system or while under the care of parents, legal guardians, or other caregivers.

CRC Article 19 is further reinforced and expanded upon by the provisions of Article 37, which explicitly states that:

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<sup>3</sup> Convention on the Rights of the Child, 1989, Art 28.

'No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.'

In 2006, during its 42<sup>nd</sup> Session, the Committee on the Rights of the Child highlighted on safeguarding children from corporal punishment and other forms of punishment considered cruel or degrading. This Commentary predominantly centred its analysis on the provisions outlined in Articles 19, 28(2), and 37 of the CRC. The paragraph 11 of the general Comment No.8 offers the following definition and description of corporal punishment:

Any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting ("smacking", "slapping", "spanking") children, with the hand or with an implement - a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children's mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.<sup>4</sup>

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<sup>4</sup> The Committee on the Rights of the Child, 42 Session, General Comment No. 08, para. 11, 2006.

According to the above observation, there is no doubt in the statement that "all forms of physical or mental violence" do not permit any degree of lawful violence against children. corporal punishment and other types of cruel or humiliating punishments are forms of violence that countries must abolish through suitable legal, administrative, social, and educational measures. It is evident that the CRC does not tolerate any form of support for corporal punishment. Nevertheless, it is essential to acknowledge that the denial of corporal punishment does not equate to a refusal of the concept of discipline itself. It is crucial to recognize that fostering the healthy development of a child relies on parents and adults providing the requisite guidance, aligning with the child's evolving capacities, to aid their progression toward responsible citizenship. The nurturing of an individual's appreciation of discipline, respect for rules, and the cultivation of a positive attitude towards a non-violent society are fundamental qualities that should be instilled from an early age. However, within a civilized society, these objectives should be achieved through alternative forms of discipline that avoid causing physical or psychological harm.

Moreover, it's important to highlight that across major international instruments concerning human rights, there is a consistent prohibition against not only torture but also any treatment or punishment deemed cruel, inhuman, or degrading. These terms appear in various articles, including Article 5 of the UDHR, Article 7 of the ICCPR, and Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

In addition to International Human Rights regime, regional human rights initiatives also given importance on the issue of corporal punishment. For an example, the European Court of Human Rights has taken a stance against the practice through a series of progressive judgments. Initially, the court scrutinized corporal punishment within penal systems, extending

its condemnation to educational settings, including private schools, in subsequent rulings. Most recently, in the case of *Tyrer v. UK*<sup>5</sup>, the court went a step further by unequivocally condemning corporal punishment even within the confines of one's home. Furthermore, the European Committee of Social Rights, responsible for monitoring Council of Europe member states' adherence to the European Social Charter and Revised Social Charter, has made a crucial determination. It underscores that compliance with these Charters entails the unequivocal prohibition of any type of violence directed at children. This prohibition must be formally codified within national legislation and extends across all contexts, encompassing educational institutions, institutions, households, and other relevant settings.<sup>6</sup>

## 5. INDIAN INITIATIVES ON CORPORAL PUNISHMENT

Corporal punishment is a form of abuse that erodes a child's autonomy and self-respect. Moreover, it hampers a child's access to education because those who fear corporal punishment are at a higher risk of either quitting school or leaving it precipitously. Consequently, corporal punishment infringes upon the right to live with dignity. Article 21 of the Indian Constitution, which protects the fundamental right to life and dignity, encompasses the entitlement to education for children under 14 years of age.<sup>7</sup> Further, Article 39(e) of the Indian Constitution necessitates that the state work progressively to ensure the protection of children from

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<sup>5</sup> *Tyrer v UK* (1978) 4 WLUK 119, available at: <https://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=001-57587&filename=CASE%20OF%20TYRER%20v.%20THE%25UNITED%20KINGDOM.pdf> Accessed on 1<sup>st</sup> August 2023.

<sup>6</sup> Council of Europe '*Eliminating Corporal Punishment: A Human Rights Imperative for Europe's Children*', (Council of Europe Publishing, 2005).

<sup>7</sup> As per Article 21-A of the Indian Constitution, the government is obligated to offer free and mandatory education to children under the age of fourteen years. This particular entitlement was established as a fundamental right through the 86th Constitutional Amendment Act of 2002.

exploitation during their formative years. Furthermore, Article 39(f) of the Indian Constitution instructs the state to progressively facilitate the holistic development of children in a healthy environment, safeguarding their dignity and freedom from any form of maltreatment.<sup>8</sup>

In addition, in the Right to Education Act of 2009, corporal punishment is broadly categorized as physical punishment, mental torment, and discrimination. Section 17 of this Act explicitly prohibits subjecting a child to physical punishment and mental harassment, ensuring that no child is subjected to either form of abuse. This section stipulates that anyone who violates this provision may face disciplinary action in accordance with the relevant service rules.<sup>9</sup>

Additionally, Sections 8 and 9 of the Right to Education Act place a responsibility on both the government and educational institutions to guarantee that children from disadvantaged backgrounds, including those belonging to weaker sections and deprived communities, are not subjected to discrimination. These sections emphasize the importance of ensuring that all children have the opportunity to pursue and successfully complete their elementary education without facing any form of discrimination.

The Juvenile Justice (Care and Protection of Children) Act of 2000 provides for the discipline of juveniles or infants in cases of cruelty.<sup>10</sup> Anyone who has actual authority or control over a juvenile or child and engages in actions such as assaulting, abandoning, exposing, or wilfully neglecting the juvenile in a manner likely to cause unnecessary mental or physical distress shall be subject to punishment. This punishment may

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<sup>8</sup>, The Constitution of India, Directive principles of state policy 26 January 1950, available at: <https://www.refworld.org/docid/3ae6b5e20.html> accessed on 9<sup>th</sup> January 2024.

<sup>9</sup> Right to Education Act of 2009, s.17.

<sup>10</sup>Juvenile Justice Act of No. 56 of 2000. s. 23.

involve imprisonment for up to six months, a fine, or both. It is important to note that there are no exceptions in this provision to exclude parents or teachers. This means that the law is designed not only to penalize those in positions of authority for acts of cruelty but also extends to encompass parents and teachers. This comprehensive approach aims to discourage corporal punishment, aligning with the overarching goal of the Juvenile Justice Act of 2000, which is to interpret and uphold the principles and protections outlined in the Convention on the Rights of the Child.

Furthermore, the Protection of Children from Sexual Offenses (POCSO) Act of 2012 explicitly prohibits all forms of sexual abuse against children, including physical punishment. Accordingly, the Juvenile Justice (Care and Protection of Children) Act, 2015 a child is defined as any individual under the age of 18 years. The Act outlines corporal punishment as the act of subjecting a child to physical punishment, which includes intentionally causing pain as a penalty for an offense or as a means of disciplining or reforming the child. The Act addresses the provision of corporal punishment in Section 82, which specifies that any person responsible for or employed by a childcare institution who administers corporal punishment to discipline a child will be subject to penalties.

Moreover, the Indian Penal Code (IPC) encompasses legislation that deems causing harm to a child as a criminal offense. Such actions can render a person liable for various charges, including voluntarily causing hurt or grievous hurt under Sections 323 or 325 of the IPC, assault or criminal force under Section 352 of the IPC, criminal intimidation under Section 506 of the IPC. If the child is subjected to such severe humiliation that it leads to suicide, then the person may also be charged under Section 305 of the Indian Penal Code for child abetment of suicide.

In the case of *Parents Forum for Meaningful Education vs. Union of India and Another*<sup>11</sup>, a petition was filed by the Parents' Forum for Meaningful Education and its President, Kusum Jain. The petition contested the legality of corporal punishment in schools, as outlined in the Delhi School Education Rules of 1973, on the grounds that it violated the Constitution. The petition was successful, and on December 1, 2000, the Court issued a judgment directing the State to ensure that 'children are not subjected to corporal punishment in schools, and they receive education in an environment of freedom and dignity, free from fear.'<sup>12</sup>

## **6. LAWS AND POLICIES RELATED TO CORPORAL PUNISHMENTS IN SRI LANKA**

Sri Lanka officially became a signatory to the CRC on January 26, 1990, and subsequently ratified it on July 12, 1991. In a concerted effort to support the principles outlined in the CRC, the Sri Lankan government introduced the Children's Charter in 1992. This marked the beginning of a journey where Sri Lanka progressively embraced various international agreements and updated its national legislation to advance children's rights, aligning itself with the responsibilities of a CRC signatory.

As a party to the CRC, Sri Lanka recognizes the imperative to curtail the prevalent use and acceptance of corporal punishment. This shift in perspective is clearly discernible through the introduction of new legislative measures, amendments to existing laws, the issuance of circulars by the Ministry of Education, and evolving judicial interpretations and opinions concerning the utilization of corporal punishment.

According to Article 341 of the Penal Code, it is stipulated as follows:

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<sup>11</sup> *Parents Forum for Meaningful Education vs. Union of India and Another* (2001) AIR Delhi 212.

<sup>12</sup> *Parents Forum for Meaningful Education vs. Union of India* AIR (2001) Delhi 212.

Whoever intentionally uses force to any person, without that person's consent, in order <sup>1</sup>to the committing of any offense or intending illegally by the use of such force to cause, or knowing it to be likely that by the use of such force he will illegally cause injury, fear, or annoyance to the person to whom the force is used, is said to use "criminal force" to that other.

In relation to corporal punishment, it is important to draw attention to Illustration (i) in Section 341, which elaborates on the following scenario:

A, a schoolmaster, in the reasonable exercise of his discretion as master, flogs B, one of his scholars. A does not use criminal force to B, because, although A intends to cause fear and annoyance to B, he does not use force illegally.

Section 71 of the Children and Young Persons Ordinance (1939) addresses acts of cruelty to children and young persons as an offense.

Section 71(1) states:

If any person who has attained the age of sixteen years and has the custody, charge, or care of any child or young person, wilfully assaults, ill-treats, neglects, abandons, or exposes him, or causes or procures him to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of an offense and shall be liable to a fine not exceeding one thousand rupees or to

imprisonment of either description for a term not exceeding three years, or to both such fine and imprisonment.

Furthermore, Section 71(6) clarifies that:

'Nothing in this section shall be construed as affecting the right of any parent, teacher, or other person having lawful control or charge of a child or young person to administer punishment to him.'

However, despite the continued existence of these regulations and examples, they are considered outdated when concerning the current practices. Following the ratification of the CRC, it was acknowledged that the Penal Code required modification, leading to the enactment of the Penal Code (Amendment) Act, No. 22 of 1995. This Amendment introduced a new provision, Section 308A, which became effective and was incorporated into the primary legislation. It reads as follows:

(1) Whoever, having the custody, charge, or care of any person under eighteen years of age, wilfully assaults, ill-treats, neglects, or abandons such person or causes or procures such person to be assaulted, ill-treated, neglected, or abandoned in a manner likely to cause suffering or injury to health (including injury to or loss of sight, hearing, limb, organ of the body, or any mental derangement), commits the offense of cruelty to children.

(2) Whoever commits the offense of cruelty to children shall, on conviction, be punished with imprisonment of either description for a term not less than two years and not exceeding ten years and may also be punished with a fine and ordered to pay compensation of an amount determined by the court to the person in respect of whom

the offense was committed for the injuries caused to such person.

Additionally, the Penal Code (Amendment) Act, No. 16 of 2006 provided the following clarification for the aforementioned section:

“Explanation: 'Injuries' includes psychological or mental trauma.”

Hence, the instances mentioned above illustrate the evolving approach adopted by lawmakers in the 20th and 21st centuries. It demonstrates a gradual recognition of the illegality of physical punishment in 1995, followed by acknowledging the mental distress associated with violence in 2006. This prohibition of corporal punishment represents a significant departure from the approach taken by the primary legislation in 1883.

The Ministry of Education in this context demonstrates a keen understanding of the issue of corporal punishment within the educational system and is proactive in addressing it. Given its overarching responsibility for the education of all students across the country, with a particular focus on those attending public schools, the Ministry of Education has taken several measures to address the issue of corporal punishment. These measures are primarily communicated through official circulars.

One such significant circular is Circular number 12/2016, which was issued by the Ministry on 29<sup>th</sup>, April 2016, and officially came into effect on 2<sup>nd</sup> May, 2016. This circular serves as the prevailing guidance and regulation for the use of corporal punishment in schools. It is important to note that Circular number 12/2016 replaces the provisions of a prior circular, Circular No. 17/2005, which was previously in place to maintain discipline within educational institutions.

While the latest circular shares similarities with its predecessor in terms of its core content related to corporal punishment, it also introduces several

additional provisions that pertain specifically to the functioning and role of the Disciplinary Board within a school. These additional provisions signify an evolving approach by the Ministry to address the issue of corporal punishment more comprehensively and effectively within the educational framework.

The circular recognizes that teachers share a duty and responsibility toward children akin to that of parents, commonly referred to as "loco parentis. Consequently, teachers are entrusted with the task of ensuring the safety, education, and overall well-being of children. Furthermore, the circular references the perspectives of medical professionals, psychologists, and humanitarians who have defined corporal punishment as a form of physical chastisement that inflicts pain. These experts have also observed that such punitive measures can detrimentally affect students' learning processes, potentially exacerbating their inclination toward anti-social behaviour and causing severe distress. Given the limited empirical evidence supporting the efficacy of corporal punishment in shaping student behaviour, the practice is regarded as ineffective.

In paragraph 2.2.1 of the circular, a comprehensive overview is provided regarding the negative outcomes associated with the practice of corporal punishment. These negative consequences have been substantiated through an array of empirical studies. The circular emphasizes the importance of addressing this issue by mandating the establishment of a Board of Discipline within educational institutions. Section 2.3 of the circular further delineates the specific responsibilities entrusted to this Disciplinary Board, thereby ensuring its effective operation.

Likewise, the circular expounds upon the gravity of potential legal ramifications in section 2.4, even when teachers employ corporal punishment with the intention of maintaining discipline. Anyone, subject to violation of Section 2.4 of the Circular would be able to seek constitutional

remedy for the violation of Article 11 of the Constitution. The circular explicitly states that the transgression of the offense of cruelty to children and young persons, as defined under Section 3 of the Penal Code (Amendment) Act (No. 22 of 1995), as well as Section 308A of the Penal Code, could punish the perpetrators. By highlighting these legal provisions, the circular serves as a critical guide for educational institutions, educators, and stakeholders, emphasizing the need for the utmost caution and adherence to both constitutional and statutory regulations in the disciplinary process. This comprehensive approach ensures that the issue of corporal punishment is addressed within a legally rigorous framework, safeguarding the rights and welfare of students while promoting a culture of discipline that is consistent with established legal standards.

The case of *Bandara vs. Wickremasinghe*<sup>13</sup> played a pivotal role in shaping the legal discourse surrounding corporal punishment in Sri Lanka, predating legislative amendments that recognized corporal punishment as a criminal offense and acknowledged its potential for causing mental trauma in 2006. This case is particularly significant due to its interpretation of Article 11 of the Sri Lankan Constitution, which safeguards citizens from cruel and degrading treatment. It sets a legal precedent that positions corporal punishment as a possible violation of constitutional rights when used excessively by educators and administrators.

Sri Lanka's practice of corporal punishment is subjected to legal scrutiny, primarily questioning its compatibility with Article 11 of the Constitution. Sri Lanka's Constitution is the supreme legal document, guaranteeing fundamental rights to its citizens, and Article 11 specifically enshrines the right to be free from torture, cruel, inhuman, or degrading treatment. The

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<sup>13</sup> *Bandara vs. Wickremasinghe* (1995) 2 Sri LR 167.

ambiguity surrounding corporal punishment's alignment with this constitutional provision has fuelled ongoing legal debate.

*Bandara vs. Wickremasinghe*<sup>14</sup> case marked a significant turning point in Sri Lanka's legal discourse on corporal punishment. It predated the legislative changes of 2006<sup>15</sup>, which recognized corporal punishment as a criminal act and acknowledged its potential to inflict psychological trauma. In this landmark case, the Sri Lankan Supreme Court issued a precedent-setting ruling.

The case revolved around allegations of corporal punishment against teachers and administrators within an educational institution. The appellant contended that the use of excessive force by educators amounted to cruel and degrading treatment, violating their constitutional rights. In its judgment, the Supreme Court held that the use of excessive force by educators and administrators to maintain discipline could indeed be considered cruel and degrading treatment. This ruling underscored the importance of interpreting Article 11 expansively to protect citizens from both physical and psychological harm. This case laid the foundation for subsequent legal developments regarding corporal punishment in Sri Lanka. It emphasized the necessity of safeguarding students from any form of cruel or degrading treatment, including physical punishment. In 2006, the legal landscape underwent significant changes with the introduction of legislative amendments that explicitly criminalized corporal punishment and recognized its potential for causing mental trauma. These amendments reflected the alignment of domestic law with the principles established in the *Bandara vs. Wickremasinghe*<sup>16</sup> case, further solidifying

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<sup>14</sup> *ibid.*

<sup>15</sup> Penal Code Amendment Act No. 16 of 2006.

<sup>16</sup> *ibid.*

the legal stance against corporal punishment in Sri Lanka. While delivering the judgment, Justice Kulatunga articulated that;

discipline of students is a matter within the purview of School teachers. It would follow that whenever they purport to maintain discipline, they act under the colour of office. If in doing so they exceed their power, they may become liable for infringement of fundamental rights by Executive or Administrative action.<sup>17</sup>

Additionally, in accordance with Judge Kulatunga's viewpoint;

this court must by granting appropriate relief reassure the Petitioner that the humiliation inflicted on him has been removed and his dignity is restored. That would in some way guarantee his future mental health which is vital to his advancement in life.<sup>18</sup>

In a landmark judgment delivered on February 12, 2021, in the case of *Hewa Maddumage Karunapala and others v Jayantha Prema Kumara Siriwardhana and others*<sup>19</sup>, the Supreme Court of Sri Lanka unequivocally prohibited the use of corporal punishment against children within the school system. This case underscored that corporal punishment constitutes a blatant infringement of Article 11 of the Sri Lankan Constitution. This decision emphasised that as minors are vulnerable and impressionable members in the society, they are entitled to higher degree of protection.

In the comparative analysis of Indian and Sri Lankan approaches to addressing corporal punishment, notable distinctions and shared

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<sup>17</sup> *ibid*, p. 167.

<sup>18</sup> *ibid*, p.168.

<sup>19</sup> *Maddumage Karunapala and others v Jayantha Prema Kumara Siriwardhana and others* SC/FR/97/2017.

principles emerge. India's legal framework is deeply rooted in its constitution, with Article 21 guaranteeing the fundamental right to life and dignity, encompassing children's entitlement to education, while Sri Lanka, as a signatory to the Convention on the Rights of the Child, places emphasis on the right to be free from cruel, inhuman, or degrading treatment under Article 11 of its Constitution. Legislative provisions in both countries explicitly prohibit corporal punishment, with India's Right to Education Act of 2009 and Sri Lanka's Penal Code providing legal backdrops for the protection of children. Additionally, judicial precedents such as the 'Parents Forum for Meaningful Education' case in India and the '*Bandara vs. Wickremasinghe*' case in Sri Lanka highlight the significance of constitutional safeguards against cruel treatment, while both countries rely on the Ministry of Education circulars to ensure non-violent educational environments. This analysis underscores the diverse approaches employed by these nations to protect child rights, contributing to a deeper understanding of their effectiveness in promoting the well-being of children.

## **7. CONCLUSION AND RECOMMENDATIONS**

The issue of corporal punishment is deeply ingrained in the fabric of Sri Lankan society, bearing significant cultural relevance. Corporal punishment not only inflicts immediate physical pain but also leaves enduring emotional and psychological scars on children. To address this critical concern, the author's comparative analysis delved into the legal frameworks surrounding corporal punishment in Sri Lanka and India. Author aimed to unravel the intricate dynamics sustaining corporal punishment practices in both nations and provide recommendations based on research findings.

International human rights standards, notably CRC, serves as a foundational framework for protecting children from all forms of violence, including corporal punishment. The CRC underscores children's right to education and safeguarding them from physical and mental harm. Regional human rights bodies, such as the European Court of Human Rights, have clearly condemned corporal punishment.

In India, legal provisions, including Article 21 of the Constitution and the Right to Education Act (2009), explicitly prohibit corporal punishment. Additionally, the Juvenile Justice Act (2000) ensures protection from cruelty, including corporal punishment, within both homes and schools. These laws reflect a steadfast commitment to child protection. In Sri Lanka, as a CRC signatory, legislative amendments were made to address corporal punishment. The Penal Code was amended in 1995 to recognize corporal punishment as an offense, and in 2006, further amendments acknowledged the psychological trauma inflicted by corporal punishment. The Ministry of Education has issued circulars to regulate corporal punishment within schools, underscoring the legal consequences for violators.

The landmark case, *Bandara vs. Wickremasinghe*<sup>20</sup> in Sri Lanka sets a significant precedent by establishing that excessive force by educators could be considered cruel and degrading treatment. This case played a pivotal role in shaping subsequent legal developments, including legislative amendments that criminalized corporal punishment. A more recent decision in Sri Lanka, the *Hewa Maddumage Karunapala case*<sup>21</sup>, reaffirmed the prohibition of corporal punishment and highlighted the imperative need to protect children's dignity.

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<sup>20</sup> *Bandara vs. Wickremasinghe* (1995) 2 Sri L.R. 167.

<sup>21</sup> *Hewa Maddumage Karunapala case*, SC/FR/97/2017.

To comprehensively address the issue of corporal punishment in Sri Lanka, the findings of the study recommends a multifaceted approach grounded in the research findings. This approach involves enacting legislative reforms to explicitly ban corporal punishment in all settings, enhancing teacher training programs to promote non-violent discipline, launching public awareness campaigns to educate communities about the harm caused by corporal punishment, and strengthening enforcement mechanisms to ensure accountability for violators. Incorporating the basic principles of CRC into domestic law, promoting positive discipline in schools, awareness creation among the students, establishing independent monitoring and reporting bodies, conducting research on corporal punishment's prevalence and its impact, engagement of civil society organizations, and fostering international cooperation with countries like India that have made significant strides in child protection are vital steps towards safeguarding children's rights and well-being in Sri Lanka. In the wise words of Kofi Annan, 'There is no trust more sacred than the one the world holds with children'<sup>22</sup> it is our paramount duty to ensure that their rights are upheld, their welfare is safeguarded, and they can grow up in an environment free from fear and want.

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<sup>22</sup> K Abrahams, T Matthews, *Promoting Children's Rights in South Africa ; A Handbook for Members of Parliament* (Parliament of Republic of South Africa,2011) Available at: <https://www.unicef.org/southafrica/media/1406/file/ZAF-promoting-childrens-rights-in-South-Africa-2011.pdf> . (Accessed on 1<sup>st</sup> August 2023).