

Domestic violence and physical punishment

Time to move on

Not so very long ago women could be lawfully assaulted by men in their own home, and as recently as 1991 women could be lawfully raped by their husbands.¹ Such views are now unacceptable and the law, supported by social and educational measures, rightly protects women from all forms of assault. But children have been left behind. Under the defence of “reasonable punishment” (section 58 of the Children Act 2004) some parents can – and do – hit their children with impunity.

Children, like all human beings, have a right to respect for their physical integrity and human dignity. Hurting them in the name of discipline violates this right. There is nothing “reasonable” about it: smacking is never necessary and often harmful. Children have the same right to legal protection from assault as adults – in fact their vulnerability makes it even more vital that the law protects them.

This organisation supports the complete removal of the defence of “reasonable punishment” under 58 of the Children Act 2004 in order to fulfill children’s human rights, prevent their abuse and combat the social acceptability of violence in inter-personal relationships.

ORGANISATION.....

SIGNED..... DATED.....

Why physical punishment undermines efforts to end domestic violence

It breaches the universal human right to protection from violence

The Committee on the Elimination of Discrimination against Women, which monitors implementation of the Convention on the Elimination of All Forms of Discrimination against Women, has recognised that the Convention requires governments to protect women against violence of any kind occurring within the family and other areas of social life,² and that full implementation of the Convention requires States to eliminate all forms of violence against women.³ In its concluding observations on the UK’s report in 2008, the Committee noted with concern “that corporal punishment is lawful in the home and constitutes a form of violence against children,

¹ See Regina V R (Rape: Marital Exemption) The Times, 24 October 1991; (1992) Cr. App. R. 216 and the Criminal Justice and Public Order Act 1994, section 142, enacted 3rd November 1994

² General Recommendation No. 12 on Violence against women, 1989, preamble

³ General Recommendation No. 19, 1992, on Violence against women, para. 4

including the girl child". The Committee recommended "that the State party include in its legislation the prohibition of corporal punishment of children in the home".⁴

The UN Convention on the Rights of the Child (CRC) requires states to protect children from "all forms of physical or mental violence" while in the care of parents or others (article 19). It requires discipline in schools to be "administered in a manner consistent with the child's human dignity" (article 28). Children, wherever they are, must never be subjected to "torture or other cruel, inhuman or degrading treatment or punishment" (article 37). The Committee on the Rights of the Child – the monitoring treaty body for the CRC – consistently interprets the Convention as requiring prohibition of all corporal punishment in the family and all other settings, linked to awareness-raising and public education. In 2006, the Committee adopted General Comment No.8 on the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment: addressing corporal punishment of children is "a key strategy for reducing and preventing all forms of violence in societies".⁵

Other human rights treaty bodies, including the Committee on Economic, Social and Cultural Rights, the Human Rights Committee and the Committee Against Torture, have also condemned corporal punishment of children, as have regional human rights mechanisms such as the Council of Europe.

It teaches children that violence is acceptable.

Whenever children are physically punished, two messages are sent to them. The first is that hitting someone is a legitimate way to exert control over them, sort out a conflict or express displeasure. The second message is that the recipients of physical punishment deserve such treatment. Both messages can have a toxic effect on the growing minds of children and contribute to the social acceptance of violence in adult life.

For example, government research found that around two in ten adults believe it is sometimes acceptable for a man to hit or slap his wife or girlfriend because of what she is wearing.⁶ A survey of more than 2,000 young people aged 14-21 found nearly half of the young men and a third of the young women could envisage circumstances when they believed it would be acceptable for a man to hit a female partner, and one in eight of the young men thought that "nagging" was a justification for violence.⁷ An NSPCC survey of young people found that almost half (43 per cent) of teenage girls believe that it is acceptable for a boyfriend to be aggressive towards his partner.⁸

Perpetrators of domestic violence often seek to justify their behaviour with reference to victims' behaviour, using language which is strongly redolent of physical punishment – "it was just a smack", "she was asking for a slapping". Such views do not appear out of the blue. Research has

⁴ 18 July 2008, Part of A/63/38, Concluding observations on fifth/sixth report, paras. 280 and 281

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

⁶ Opinion poll in England and Wales commissioned by the Home Office, February 2009

⁷ Research findings published in Humphreys & Mullender (1999), *Children and domestic violence: a research overview of the impact on children*. Cited by the Department for Children, Schools and Families, Ev 397, and the House of Commons Home Affairs Committee report on *Domestic Violence, Forced Marriage and "Honour"-Based Violence* (sixth report of session 2007-08), vol. 1

⁸ NSPCC, Teen abuse survey of Great Britain (2005)

shown that there may be an association between physical punishment in childhood and partner-abuse in later life.⁹ The acceptability of punitive violence is internalised from an early age and is deeply rooted in our society.

It weakens the principle of “zero tolerance” of violence in the home

Professionals working in domestic violence have expressed deep frustration with the smacking law; Women’s Aid and Refuge have pointed out the irony of introducing a law which makes common assault between adults an arrestable offence in the same year that introduced the defence of “reasonable punishment” for common assaults against children, and of having a law which acknowledges the harm to children of *witnessing* domestic violence while denying them protection from *experiencing* it.¹⁰ The vast majority of services in the field of domestic and sexual violence do not just support the aims of the Children are Unbeatable! Alliance, they also practice what they preach by maintaining a true zero tolerance policy, banning all forms of violence in refuges, including the physical punishment of children.

However Government support for zero tolerance of violence in the domestic home does not extend to children, against whom an arbitrary level of violence is allowed under the defence of “reasonable punishment”. It is perhaps no coincidence that the National Assembly for Wales, the only Government body to be committed to prohibition of physical punishment, is also the only body in the UK to include children in its definition of domestic violence.¹¹

Physical punishment plays a central role in child abuse but child protection professionals are unable to deliver clear messages to families that hurting children is not allowed. Section 58 fails to protect children from painful, dangerous, humiliating or frequent assaults and, by permitting an invasion of children’s physical integrity, creates a potential pathway to sexual abuse. Those witnessing (or experiencing) physical punishment are often reluctant to intervene or complain.

Removing the “reasonable punishment” defence would not lead to the prosecution of parents for trivial smacks unless this was considered to be both in the public interest and in the best interest of the child concerned. There would be no change in the threshold for formal social work investigations of “significant harm”. But the law would be doing all it could by sending into the family home the clear message that it is as illegal and unacceptable to hit a child as to hit anyone else.

⁹ See, for example, Simons, R. L., Johnson, C., Beaman, J. & Conger, R. D. (1993), “Explaining women’s double jeopardy: Factors that mediate the association between harsh treatment as a child and violence by a husband”, *Journal of Marriage and the Family*, 55, 713–723; Cast, A. D., Schweingruber, D. & Berns, N. (2006); “Childhood physical punishment and problem solving in marriage”, *Journal of Interpersonal Violence*, 21, 244–261; Lavoie, F., Hebert, M., Tremblay, R. E., Vitaro, L. & McDuff, D. (2002), “History of family dysfunction and perpetration of dating violence by adolescent boys: a longitudinal study”, *Journal of Adolescent Health*, 30, 375–383

¹⁰ Submissions to the Government’s 2006–7 review of section 58 – the new laws referred to are s120 Adoption and Children Act 2002 and s10 of the Domestic Violence, Crime and Victims Act 2004

¹¹ The Welsh Assembly defines domestic abuse as “the use of physical and/or emotional abuse or violence, including undermining self confidence, sexual violence or the threat of violence, by a person who is or has been in a close relationship”, *Tackling Domestic Abuse: The All Wales National Strategy*, 2005. The definition used by the rest of the UK is “any incident of threatening behaviour, violence or abuse (psychological, physical, sexual, financial or emotional) between adults who are or have been intimate partners or family members, regardless of gender or sexuality”: this definition is under review.