



# Examining the Consequences of Corporal Punishment on Children in Sri Lanka: A Study of Child Rights and Legal Frameworks

Danushka Manoj\*  
Wasana Panditharatne\*\*  
Geethani Jeewanthi\*\*\*

## Abstract

*Corporal Punishment is a controversial issue globally, and Sri Lanka is not an exception. Although the government of Sri Lanka has introduced various legislative measures to prohibit Corporal Punishment, it is still widely used as a disciplinary measure in homes, schools, and other institutions. This research article aims to examine the legal perspective of Corporal Punishment in Sri Lanka, including the existing laws and their implementation. The article also explores the implications of Corporal Punishment on children's physical and mental health, education, and human rights. The research has been carried out by analyzing existing literature subjective to qualitative analysis. Primary legal sources such as constitutional provisions, legislative enactments, Conventions and decided case laws have been used for the analysis. Further, journal articles, books, policy papers and writings of the highest authorities in the field, and other observations made on the subject by reputed scholars have been used as secondary sources to enhance the outcome of this research. The research findings suggest that despite the legal prohibition, corporal punishment remains prevalent in Sri Lanka due to various socio-cultural*

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\* M.Phil. (SUSL), MHR (Colombo), LL.B.Hons (Colombo), Attorney-at-Law, Senior Lecturer, Department of Legal studies, Faculty of Humanities and Social Sciences, The Open University of Sri Lanka.

\*\* LL.M. (Colombo), LL.M. (KDU), LL.B. (Colombo), PgDLS (Colombo), Attorney-at-Law, Senior Lecturer, Department of Legal studies, Faculty of Humanities and Social Sciences, The Open University of Sri Lanka.

\*\*\* LL.M. (Colombo), LL.B. Hons. (Colombo), PgD in Criminology and Criminal Justice (USJP), Attorney-at-Law, Senior Lecturer, Department of Legal studies, Faculty of Humanities and Social Sciences, The Open University of Sri Lanka.

*and economic factors. The article concludes by emphasizing the urgent need for effective law enforcement, public education, and awareness-raising campaigns to eliminate Corporal Punishment in Sri Lanka.*

**Keywords:** *Corporal Punishment, Child Rights, Human Rights, Legal Perspectives, Sri Lanka.*

## **Introduction**

**“Children are like wet cement: whatever falls on them makes an impression.”**

**Dr. Haim Ginott**

This quote emphasizes the impressionability of children and the importance of positive experiences during their formative years. It implies that children’s experiences in their early years shape their future development and leave a lasting impact on their personality and behavior. Therefore, it is crucial to provide children with protection, education, healthcare, shelter, and love, regardless of their circumstances. Every society, country, and culture should ensure that children are granted equal opportunities to succeed. Despite the legislative measures introduced by the Sri Lankan government to prohibit Corporal Punishment (hereinafter referred to as CP), it is still widely used as a disciplinary measure in homes, schools, and other institutions.

CP refers to the use of physical force to discipline individuals, particularly children. CP includes spanking, hitting, or any other physical action that causes physical pain or discomfort. Despite the growing evidence on the harmful effects of CP, it is still prevalent in many countries, including Sri Lanka. The use of CP has been a subject of debate and controversy globally due to its adverse effects on children’s physical and mental health, education, and human

rights.<sup>1</sup>

Despite several legal and policy frameworks that protect children's rights and prohibit CP in Sri Lanka, the practice of CP remains widespread. The study on 'Child Disciplinary Methods Practiced in Schools in Sri Lanka'<sup>2</sup> released in May 2017 by the National Child Protection Authority has revealed that 80.4% out students (762) out of 948 students in six districts had been subjected to at least one method of CP. Further, it has found that both the qualitative and quantitative studies indicated that the use of CP and psychological aggression was highly prevalent in Sri Lanka Schools. Unfortunately, most teachers and principals believe in the efficacy of CP.

Therefore, there is a lack of implementation of existing laws and policies, and parents and teachers continue to use CP as a form of discipline. This has several negative implications for children's physical and mental health, including physical harm, long-term psychological effects, and harm to the parent-child relationship. Additionally, CP can lead to increased aggression in children, and perpetuate a cycle of violence that can have long-term implications for the society as a whole.

Furthermore, there is a lack of research and understanding of the prevalence and causes of CP in Sri Lanka. This limits the development of effective interventions to address the issue and protect children's rights. There is a need for further research to understand the root causes of CP in Sri Lanka and identify effective interventions that promote positive discipline and non-violent forms of discipline.

Overall, exploring the legality and implications of CP in Sri Lanka from child rights and legal perspectives is a crucial area of study

<sup>1</sup> Aloysius C, 'Corporal Punishment Causes Injuries and Physical Impairments' Sunday Observer (28 November 2021) <https://www.sundayobserver.lk/2021/11/28/health/corporal-punishment-causes-injuries-and-physicalimpairments#:~:text=Corporal%20punishment%20includes%20any%20action,form%20of%20violence%20against%20children> accessed 1 April 2023.

<sup>2</sup> National Child Protection Authority, A Study on Child Disciplinary Methods Practiced in Schools in Sri Lanka (2017) [https://stopchildcruelty.com/media/doc/NCPA\\_2017.pdf](https://stopchildcruelty.com/media/doc/NCPA_2017.pdf) accessed 2 April 2023.

that requires urgent attention. Addressing this issue requires a multi-faceted approach that involves parents, teachers, policymakers, and children to create a safe and supportive environment for all children in Sri Lanka.

Exploring the legality and implications of corporal punishment (CP) in Sri Lanka from child rights and legal perspectives is a significant area of study for several reasons. Firstly, CP can violate the basic human rights of children, including their right to dignity, freedom from cruel and degrading treatment, and protection from physical harm. Examining the legality and implications of CP in Sri Lanka can help to identify legal and policy gaps, thereby enhancing the protection of children's rights. Secondly, CP can lead to physical and psychological harm, and in severe cases, even death. Analyzing child rights and legal perspectives can uncover effective strategies for preventing violence against children, including the promotion of positive and non-violent forms of discipline. Thirdly, understanding the legal framework and policy implications of CP can assist in developing effective laws and policies that protect children from violence and promote their overall well-being. This might involve revising existing laws or creating new ones that prohibit CP in all settings, such as homes, schools, and other institutions. Finally, exploring the legality and implications of CP in Sri Lanka can contribute to the advancement of research and knowledge in the field of child protection and human rights, including the identification of best practices and interventions that prevent violence against children and promote their well-being.

### **Research Objectives**

- (a) To evaluate the impact of corporal punishment on children's rights in Sri Lanka.
- (b) To identify legal and policy gaps related to corporal punishment and child rights in Sri Lanka.
- (c) To analyze effective strategies for preventing violence against

children, including promoting positive discipline.

- (d) To develop recommendations for effective laws and policies to protect children from corporal punishment in various settings.
- (e) To contribute to the advancement of research and knowledge in child protection and human rights, identifying best practices and interventions.

Overall, exploring the legality and implications of CP in Sri Lanka from child rights and legal perspectives is a crucial area of study that can help protect children's rights, prevent violence against children, and advance research and knowledge in the field of child protection and human rights.

Therefore, this research aims to examine the legal perspective of CP in Sri Lanka, including the existing laws and their implementation. The article also explores the implications of CP on children's physical and mental health, education, and human rights. The research design has been carried out by analyzing existing literature subjective to qualitative analysis. It used primary legal sources such as constitutional provisions, legislative enactments, Conventions and decided case laws. Besides journal articles, books, policy papers and writings of the highest authority in the field and other comments made on the subject by reputed scholars have been used as secondary sources to enhance the outcome of this research.

### **Corporal Punishment and the International Human Rights Framework: Legal Implications and Standards**

Prior to the implementation of the Convention on the Rights of the Child<sup>3</sup> (hereinafter referred to as CRC) the International Bill of Human Rights, comprising the Universal Declaration of Human Rights<sup>4</sup> (hereinafter referred to as UDHR) and the two International

<sup>3</sup> Convention on the Rights of the Child (20 November 1989) UNTS 1577, 3

<sup>4</sup> Universal Declaration of Human Rights (1948) UN General Assembly Resolution 217 A (III) <https://www.un.org/en/about-us/universal-declaration-of-human-rights> accessed 2 August 2024.

Covenants on Civil and Political Rights<sup>5</sup> (hereinafter referred to as ICCPR) and on Economic, Social, and Cultural Rights<sup>6</sup> (hereinafter referred to as IESCR) recognized the entitlement of all individuals to equal protection under the law, as well as respect for their human dignity and physical integrity. The Convention on the Rights of the Child reinforces the responsibility of states to ban and eradicate all types of cruel or degrading punishment, including CP. This obligation is based on the principle that every person's dignity must be respected, which is a core tenet of international human rights law.

According to the Convention on the Rights of the Child's preface, which aligns with the United Nations Charter<sup>7</sup> and Universal Declaration's principles, acknowledging the inherent dignity and equal and inalienable rights of every person is fundamental in promoting freedom, justice, and peace worldwide.

CRC Article 37 requires States to ensure that "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment". This is complemented and extended by Article 19 of the CRC which requires States to "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 is no uncertainty in the statement that "all forms of physical or mental violence" do not permit any degree of lawful violence against children. CP and other types of cruel or humiliating punishment are forms of violence that countries must abolish through suitable legal, administrative, social, and

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<sup>5</sup> International Covenant on Civil and Political Rights (ICCPR), 16 December 1966, 999 UNTS 171

<sup>6</sup> International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) UNTS Vol 993, 3.

<sup>7</sup> United Nations Charter (UN Charter, 1945).

educational actions. Further, the CRC Article 28, paragraph 2 refers to school discipline and requires States parties to “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.”

Regional human rights mechanisms have also started condemning CP since 1970. The European Court of Human Rights has issued a series of judgments that have increasingly denounced the practice of CP of children. The court initially criticized CP in the penal system, and then later in schools, including private schools. Most recently, the court condemned CP in the home.<sup>8</sup> The European Committee of Social Rights, which oversees the compliance of Council of Europe member states with the European Social Charter and Revised Social Charter, has determined that adherence to the Charters necessitates the prohibition of any form of violence against children. This prohibition must be enshrined in legislation, and must apply to all settings, including schools, institutions, homes, and other locations.<sup>9</sup>

The United Nations Committee on the Rights of the Child<sup>10</sup> has provided a definition of CP which states the following.

*“The Committee defines “corporal” or “physical” punishment as 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*

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<sup>8</sup> *Tyrer v UK* (1978) 4 WLUK 119 <https://hudoc.echr.coe.int/app/conversion/docx/pdf?library=ECHR&id=001-57587&filename=CASE%20OF%20TYRER%20v.%20THE%20UNITED%20KINGDOM.pdf> accessed 1 April 2023.

<sup>9</sup> Council of Europe, *Eliminating Corporal Punishment: A Human Rights Imperative for Europe’s Children* (Council of Europe Publishing, 2005) [http://www.coe.int/T/E/Human\\_Rights/Esc/](http://www.coe.int/T/E/Human_Rights/Esc/) accessed 1 April 2023.

<sup>10</sup> United Nations Committee on the Rights of the Child, *General Comment No 8: The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Discipline* (2006) CRC/C/GC/8.

*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."*

From the above, it is evident that the CRC does not endorse any kind of CP. Nevertheless, it is important to acknowledge that dismissing CP does not mean rejecting the idea of discipline. In the *Hewa Maddumage Karunapala and others Vs Jayantha Prema Kumara Siriwardhana and others*<sup>11</sup> case, the Supreme Court emphasized the importance of parents and adults providing proper guidance to children, based on their growing capabilities, to ensure their well-being and help them become responsible members of society. It is vital to teach children discipline, respect for rules, and a positive attitude towards a peaceful community from an early age. However, it is essential to achieve these goals through non-violent means of discipline that do not cause any physical or psychological harm in a civilized society.

Furthermore, it should be noted that all significant global proclamations on human rights prohibit the act of torture, as well as any form of mistreatment or punishment that is considered cruel, inhuman, or degrading. Similar terms can be found in several articles, such as Article 5 of the UDHR, Article 7 of the ICCPR, and Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading

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<sup>11</sup> *Hewa Maddumage Karunapala and Others v Jayantha Prema Kumara Siriwardhana and Others* [2017] SC/FR/97/2017 [https://supremecourt.lk/images/documents/scfr\\_97\\_17.pdf?fbclid=IwAR28O0G308J8TOxiLJIOs7cIYj9yWgp\\_q3LRcUqQ1NDm5S4iOmQVQRWxdaY](https://supremecourt.lk/images/documents/scfr_97_17.pdf?fbclid=IwAR28O0G308J8TOxiLJIOs7cIYj9yWgp_q3LRcUqQ1NDm5S4iOmQVQRWxdaY) accessed 1 April 2023.



Treatment or Punishment.

### **Applicable Domestic Law on the Corporal Punishment**

Sri Lanka became a signatory of the CRC on 26th January 1990 and ratified it on 12th July 1991. To support the CRC, the Sri Lankan government established the Children's Charter<sup>12</sup> in 1992. Over time, Sri Lanka has adopted various international conventions and revised national laws to promote children's rights, in line with its obligations as a CRC signatory. As a party to the CRC, Sri Lanka acknowledges the need to restrict the prevalent use and acceptance of CP. This shift in perspective is evident in the introduction of new laws, amendments to existing laws, circulars issued by the Ministry of Education, and changing opinions expressed in judicial rulings on the use of CP.

According to the Penal Code<sup>13</sup> Article 341, it has been mentioned that;

*“Whoever intentionally uses force to any person, without that person's consent,. In order to the committing of any offence or intending illegally by the use of such force to cause, or knowing it to be likely that by the use of such force he will illegally cause injury, fear, or annoyance to the person to whom the force is used, is said to use “ criminal force “ to that other.”*

In relation to the subject of CP, it is necessary to bring to notice Illustration (i) in Section 341, which explains the following:

*“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.”*

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<sup>12</sup> Children's Charter (Sri Lanka, 1992)

<sup>13</sup> Penal Code (Sri Lanka) [No 2 of 1883, as amended]

Article 71 of the Children and Young Persons Ordinance<sup>14</sup> stipulates the act of being cruel to children and young persons as an offense and Article 71(1) states that;

*“if any person who has attained the age of sixteen years and has the custody, charge, or care of any child or young person, willfully assaults, ill-treats, neglects, abandons, or exposes him, or causes or procures him to be assaulted, ill-treated, neglected, abandoned, or exposed, in a manner likely to cause him unnecessary suffering or injury to health (including injury to or loss of sight, or hearing, or limb, or organ of the body, and any mental derangement), that person shall be guilty of an offence and shall be liable to a fine not exceeding one thousand rupees or to imprisonment of either description for a term not exceeding three years, or to both such fine and imprisonment”.*

Further, Article 71(6) states 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.”*

Although the aforementioned regulation and example have not been revoked, they are regarded as outdated under current practices. After ratifying the UNCRC, it was recognized that the Penal Code needed to be modified, which resulted in the Penal Code (Amendment) Act, No. 22 of 1995. The addition of a new provision, identified as Section 308A, was made effective by the Amendment and added to the primary legislation, which reads as follows:

*“(1) Whoever, having the custody, charge or care of any person under eighteen years of age, willfully 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*

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<sup>14</sup> Children and Young Persons Ordinance (1939) 48 of 1939 <https://www.lawnet.gov.lk/children-and-young-persons-2/> accessed 2 April 2023.

*to cause him suffering or injury to health (including injury to, or loss of, sight at nearing, or limb or organ of the body or any mental derangement), commits the offence of cruelty to children.*

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

Additionally, the Penal Code (Amendment) Act, No. 16 of 2006 included the subsequent clarification for the above-mentioned section:

*“Explanation: “injuries” includes psychological or mental trauma.”*

Hence, the above-mentioned instances depict the changing approach adopted by lawmakers during the 20<sup>th</sup> and 21<sup>st</sup> centuries, gradually acknowledging the unlawfulness of physical punishment in 1995, followed by acknowledging the mental distress linked with violence in 2006. The prohibition of CP is a significant departure from the approach taken by the primary legislation in 1883.

Furthermore, the Ministry of Education is aware of the use of Corporal Punishment and takes action on the matter. Being responsible for the education of all students in the country, especially those in public schools, the Ministry of Education has issued several circulars regarding the use of CP. The current circular that governs the use of CP in schools is Circular number 12/2016, which was released on 29.04.2016 and came into effect on 02.05.2016. This circular supersedes the provisions of Circular No.17/2005, which was previously in place for ensuring discipline in schools. The latest circular contains similar content to the previous one, but with some additional provisions regarding the Disciplinary Board of a school.

The circular acknowledges that teachers have a duty and responsibility towards children similar to that of parents, known as *loco parentis*. As such, teachers have a responsibility to ensure the safety, education, and overall well-being of children. The circular also cites medical officers, psychologists, and humanitarians who have defined CP as physical chastisement that causes pain. They have further noted that such punishment could have a negative impact on the learning process of students, increase their tendency to exhibit anti-social behavior, and cause severe distress. As there is minimal evidence to support the effectiveness of CP in shaping student behavior, the practice is considered useless.

Furthermore, the circular lists various negative outcomes associated with CP in paragraph 2.2.1, as revealed through multiple studies. According to the circular, it is required for a school to establish a Board of Discipline and the guidelines for its formation are specified. The circular's section 2.3 outlines the responsibilities of the Disciplinary Board while section 2.4 specifies the consequences and potential legal actions against teachers who use punishment on students, even if the intention was to enforce discipline. In Section 2.3.2, alternative forms of discipline are presented as substitutes for CP. Additionally, Section 2.4 acknowledges that even when Corporal Punishment is used as a means of discipline, it could potentially result in legal consequences. The circular specifically acknowledges that the violation of Fundamental Rights under Article 11 of Chapter III and Article 126 of Chapter XVI of the Constitution of the Democratic Socialist Republic of Sri Lanka<sup>15</sup> may result in legal action. Moreover, it is stated that the breach 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) and Section 308A of the Penal Code, as previously mentioned, may result in a potential legal action.

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<sup>15</sup> Constitution of the Democratic Socialist Republic of Sri Lanka 1978.

In Sri Lanka, it is well-known that the use of CP may be considered a breach of Article 11 of the Constitution. The case of *Bandara Vs. Wickremasinghe*<sup>16</sup> supports this view, even though it was decided before the amendments to the penal code that made CP a crime and recognized the impact of mental trauma in 2006. The Supreme Court in this case held that if teachers and administrators used excessive force to maintain discipline, it could be considered as cruel and degrading treatment. Kulatunga J held the opinion in the *Bandara v. Wickramasinghe* case 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.”*

Additionally, according to Justice Kulatunga’s perspective;

*“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.”*

Further, it is crucial for the well-being and healthy development of the child that they feel that their dignity is acknowledged by the legal system. This decision, therefore, is important in affirming the child’s fundamental dignity and promoting their respect for themselves and others.

## **Conclusion and Recommendations**

Children are a valuable asset to a nation and should be treated with love and care, not cruelty. Using CP to discipline a child is

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<sup>16</sup> *Bandara v Wickremasinghe* (1995) 2 SLR 167 <https://www.lawnet.gov.lk/wp-content/uploads/2016/11/034-SLLR-SLLR-1995-2-BANDARA-V.-WICKRAMASINGHE.pdf> accessed 1 April 2023.

not acceptable in education, as it can cause immeasurable harm to their physical and mental well-being. When teachers are enforcing discipline, they are acting in their official capacity and not as individuals. If they exceed their authority while performing their duties, they may be held accountable for violating fundamental rights through executive or administrative action. If the State fails to protect children's fundamental rights, outlawing CP will be meaningless. The State and schools have an obligation to acknowledge children's right to be free from any violence related to education. Even minor violence towards children can escalate into more severe forms, as teachers using a rod may not be mindful of the force they are applying. The case of *Parents Forum for meaningful education and another v. Union of India and another*<sup>17</sup> highlights that children possess the same constitutional rights as adults and their age and size should not be used as a basis to deprive them of these rights. It is essential to recognize that a child's humanity is not inferior to that of an adult merely because of their small stature. The eradication of CP cannot be accomplished through sporadic actions alone. Rather, it requires a fundamental understanding among those responsible for children's well-being that violence cannot be a legitimate method of discipline. Our country's core values, based on the teachings of major faiths, strongly condemn cruelty, violence, and physical harm.

There are several reasons for using CP as a disciplinary method is ineffective. Adults often resort to physical violence because they believe it will result in immediate compliance. However, this approach teaches children to fear violence and perpetuates the normalization of violence, rather than fostering a true understanding of the offense committed and the societal value of discipline. When children avoid certain behaviors in the future, it is often due to the trauma of the violence inflicted, rather than a genuine understanding of their

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<sup>17</sup> *Parents Forum for Meaningful Education and Another v Union of India and Another* [2000] 1 December 2000, 2001, IIAHD Delhi 20, AIR 2001 Delhi 212, 89 (2001) DLT 705, 2001 (57) DRJ 456. Available at: <https://indiankanoon.org/doc/1353622/> (Accessed 1 April 2023).

mistake. Encouraging CP contributes to the normalization of violence, undermines children's dignity, autonomy, and integrity, and can lead to unhealthy and disruptive behavior in adulthood. Ultimately, CP disregards the fundamental rights of each child.

Based on the analysis of child rights and legal perspectives regarding corporal punishment (CP) in Sri Lanka, the following recommendations are suggested: Ban the use of CP in all settings, including homes, schools, and other institutions, through clear legislation and effective enforcement. Conduct awareness-raising campaigns on the harmful effects of CP and promote positive and non-violent methods of discipline. Provide training for parents, teachers, and other caregivers on positive and non-violent methods of discipline, including effective communication and conflict resolution skills. Strengthen the child protection system in Sri Lanka, including the reporting and investigation of cases of CP, and ensure that victims of CP have access to appropriate support and services. Conduct further research to understand the prevalence and impact of CP in Sri Lanka, including its impact on children's mental health and well-being. Strengthen the implementation and monitoring of existing laws and policies related to child protection and CP and ensure accountability for those who perpetrate violence against children. Promote the active involvement of children in decision-making processes related to child protection and their rights and ensure that their voices are heard and valued.

Ultimately, it is crucial to bear in mind the message conveyed by the aforementioned quote, which highlights the influential and impressionable nature of childhood experiences. Therefore, it is incumbent upon us to ensure that the experiences we provide to children are constructive, supportive, and compassionate, rather than aggressive, harmful, and distressing. By doing so, we can create a more equitable and humane society that values the rights and dignity of all children and fosters their growth and development in a safe and nurturing environment.