

Children also have rights: Time to end corporal punishment

By Grenville Cross

Children, said Plutarch, need to be led by encouragement and reasoning, and “most certainly not by blows or ill-treatment”. Although it has taken many years for his message to be heeded, it is finally hitting home. Since International No Spank Day was inaugurated in 1998, as part of global efforts to end violence against children, it has been celebrated every April 30.

The United Nations Convention on the Rights of the Child, which defines a child as a person aged under 18, has applied to Hong Kong since 1994. Article 19 requires that children be protected “from all forms of physical or mental violence, injury or abuse”. This, unfortunately, is not happening, and the Social Welfare Department announced in February that child abuse cases had reached a 14-year high. In 2018, 1,064 cases were recorded, up from 947 in 2017, with 64.5 per cent of cases involving a parent.

Between February and April this year, Against Child Abuse sought to evaluate the scale of the problem through a random survey of 333 parents and 216 children. It discovered that 55.5 per cent of parents used corporal punishment on their children, while 50.5 per cent of children said they had been punished in this way. Whereas 14.7 per cent of children reported that they had been punished simply because their parents were in a bad mood, an alarming 76.9 per cent of children under 12 did not even know why they had been punished.

Of particular concern was the ACA’s finding that 69.5 per cent of the children considered that physical punishment had affected them negatively. Many commented that they became alienated from their parents, underwent a loss of self-confidence, and suffered emotional distress. Whereas homes are supposed to be sanctuaries, it is clear that often they are not, although many children suffer in silence.

In the United States, where 90 per cent of parents beat their children, research has shown that beatings have long-term consequences. Once a child is exposed to violence, he or she becomes more likely to use violence against others, and this can lead to delinquency.

The UN Committee on the Rights of the Child defines corporal punishment as “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however slight”. Although the government has already done much to protect children, there is still more to be done. Until quite recently, corporal punishment was officially sanctioned for problematic children, but no longer. The Education Regulations prohibit corporal punishment by teachers, and caning as a punishment for convicted persons has been unlawful since 1990. The Child Care Service Regulations forbid physical punishment in child care centres, and the cane can no longer be used for inmates who commit disciplinary offences within the penal system.

Although it is an offence to use force against adults without their consent, children do not enjoy similar protection. Children, however, no less than adults, require proper protection. Given their vulnerability, their needs are much greater. This, however, is not how the criminal law sees things.

If a parent is prosecuted for assaulting a child, a defence of “reasonable chastisement” is currently available. What is reasonable differs from case to case, but most adults quite clearly have no idea how

much force is legitimate, or of the psychological impact upon the child. If there are severe injuries, the force will have been excessive, but many cases are borderline. Defendants are usually given the benefit of the doubt, particularly when the child is very young and finds it difficult to testify.

Children, however, have rights of their own, and a situation in which they can be beaten at will is intolerable. So long as physical punishment is legal at home, children remain at risk, with tragedies a real possibility. What may have been thought appropriate in the past is no longer acceptable, and children can be raised successfully without harming them.

In many situations, all that is required to correct a child's inappropriate behavior is firm advice. This may be linked to a withdrawal of privileges, or even a curfew. Force, however, remains the preferred option of many parents, and this must change.

In 1979, Sweden became the first state to ban corporal punishment entirely. By 2018, 58 states worldwide had followed suit. In September, Nepal became the first Southeast Asian state to abolish corporal punishment, and Wales has recently announced plans to do likewise.

The UN Committee has called for an end to corporal punishment in all settings, and this must now be heeded. All forms of degrading treatment or punishment of children are unacceptable, and the government must prohibit them by law. Once this is achieved, it will have ushered in an era of child safety, and one which is also respectful of their dignity as human beings.

The author, a Senior Counsel, is the Patron of Against Child Abuse and a former Director of Public Prosecutions

Reference:

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