

Corporal Punishment vs. Counselling and Guidance in Fijian Schools

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Abstract

Corporal Punishment has been a major issue of contention in Fiji. Its use in schools also comes under regular public discussion in the country, despite it being criminalised. This paper examines the issue of Corporal Punishment in Fiji and proposes that counselling can provide a 'win-win solution' to the problem of poor discipline, disrespect and many more.

Introduction

One can trace the use of corporal punishment in general and schools in particular to as early as 10th century B.C in Solomon's Proverbs. '*Do not hold correction from a child; for if you beat him with a rod, he will not die. You shall beat him with a rod and deliver his soul from hell*' (book of Proverbs 23: 13 &14) is often quoted to justify corporal punishment. Corporal punishment has its recorded origin in classical civilizations such as Greek, Roman and Egyptian. Flagellation as a common means of self-discipline was becoming common in medieval Europe under the influence of the medieval church (Gaffaney, 1997). Schools, often closely associated with the Churches, received the flow on influence on the use of corporal punishment. However, as early as in the 11th century, Saint Anselm, Archbishop of Canterbury, spoke against what to him was excessive use of corporal punishment in the handling of children. The English philosopher, John Locke explicitly criticized the use of corporal punishment in education; his work had a big influence on the banning of corporal punishment in Polish schools in 1783 (Conte, 2000). Incidences where victims lost their lives at the hands of disciplinarians were used to galvanize public opinion against corporal punishment in the early 19th century. Many schools throughout the world, however, continued to use corporal punishment despite the ban of its use under the UN Universal

Declaration of Human Rights in 1948, which prohibited all forms of violence against any human person.

The Fiji Islands Education Commission stated that students cannot learn well if they are in an environment that induces fear – fear of teachers or fear of other students (2000:104). In highlighting one of its National Goals for Education 2006–2015, the Suva Declaration pointed out that 'the school is central to the teaching and learning process. To provide a safe environment that enhances effectiveness, schools must safeguard against external pressures' (2005:4).

This paper examines the use of corporal punishment in Fiji and proposes that guidance and counselling can produce better results than corporal punishment.

School Environment

Schooling in Fiji is concerned with the initiation of students into worthwhile activities. Given the premise that social security forms an integral part of the school life, students need to have an environment that promotes pro-social behaviour and positive social interactions amongst staff and students. In addition, they need an environment which provides opportunities for them to learn and exhibit appropriate social behaviours and self-discipline, encourages appropriate and fair corrective measures for those who display inappropriate behaviours, and which sustains pro-social behaviour at all levels and at all times.

Incidences of bullying and violence in schools have been linked to behaviour management problems in schools in the country.

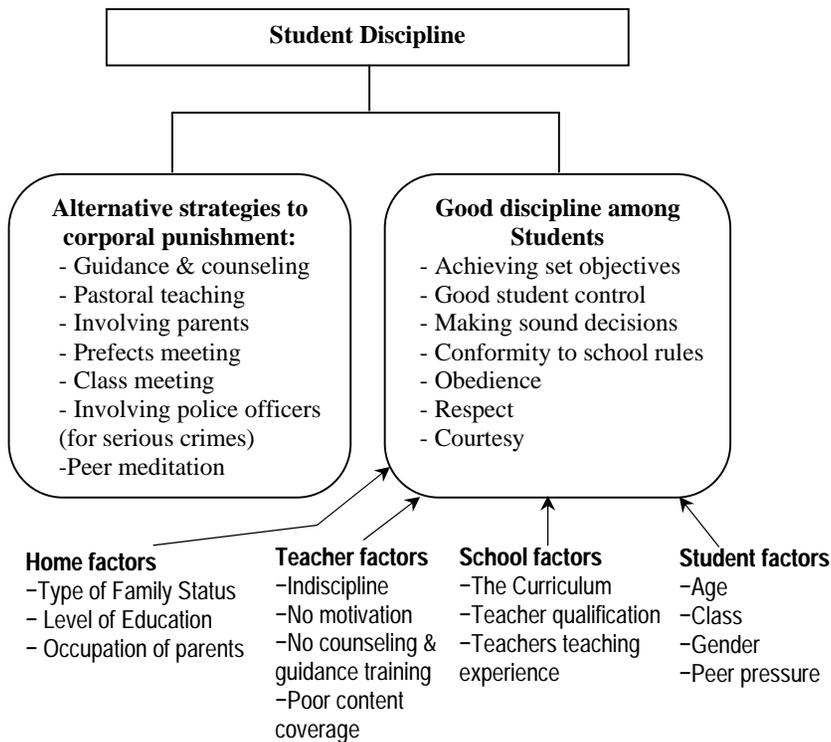
Schools, like other credible organisations, have a set of well laid out policies and procedures for their smooth running and functioning. The school system in Fiji is advised by the Ministry of Education through Education Gazettes on all policy matters, including those concerned with administration, school prescription/syllabus/curricula and their implementation at various grades or levels.

Discipline in schools is seen to curtail misbehaviour, disorderly conduct and insubordination. The degree of discipline also reflects on the image of the school. This also reflects the environment, standard of education, and behavioural dimensions of the head of the school, staff, parents and the community at large. School and home surroundings play a vital role in determining the type of citizen we are preparing. Order in the school and in classrooms is necessary before serious learning becomes possible. Achieving and maintaining order and discipline requires teaching skills and classroom management techniques, whose effectiveness can

be verified empirically; it is the subject of many instruction manuals (Haigh, 1994: 17).

The conceptual framework that is relevant is one which has alternative strategies for enforcing discipline mapped out for the learner, school, and the teacher. Fig 1 provides an illustration of this.

Figure 1: Conceptual framework



Teachers Creating the Culture of Learning

Adolescence is a critical and sensitive stage in life. During this period, many young people encounter relationship and identity problems. Their ability to take rational decisions is hindered because they are still in a development stage; their decisions are clouded by emotions. This is further compounded by their reluctance to speak and discuss about such is-

ues. For this reason, parents, relatives, teachers and members of the community must be vigilant and be very tactful in approaching young people and guiding them to make sure they make the right decisions whenever they meet up with a crisis. 'Suicide definitely should not be an option', remarked the Education Minister during a suicide awareness preventing programme in 2015; he claimed that preventing suicide is every ones business (Minister for Education, 2015). Teachers ought to always note that if students had known all the things then they would not have to be in school.

A school should have a culture of learning rather than a culture of punishment (Prawat, 1990). Human and moral value topics play a significant role in generating and sustaining this culture. Teachers have a duty to mould students so that they turn out to be better citizens of tomorrow depicting good ethical values, patriotism, civic pride, self reliance and sustainability. Reformative work process must commence from the physical development of the body, intellectual development of the mind and the spiritual development of the soul. These three developments combined make one unit of a good citizen.

Corporal Punishment

Until recent years, corporal punishment was the order of the day in combating indiscipline, immorality, and inability to compete in the educational field. Teachers exposing their superiority complex through harsh punishments, meted out in painful ways which belittled students, were regarded as normal not long ago. Even the Ministry of Education had rules on corporal punishment, prescribing the design of the equipment to be used, which was restricted to a leather strap, the number of strokes that could be given out, and the maintenance of a log book recording all instances of corporal punishment. Other forms of physical punishment were also regarded as normal. Common ones were running around the playground, pulling out weeds, pulling out sensitive grass, standing outside in the sun, standing on a bench, imitating a rooster, sit-ups, and wearing garlands made of cotton reels or bottle tops. Fear created in students was so intense that if for some reason a teacher visited a pupil's home, the pupil would hide in the house, neighbourhood or bushes.

Some Case Studies

The first case study presented is the finding of UNICEF survey report.

Corporal Punishment- Case Study 1

A study carried out in 2008 found that 37% of the 16-17 year olds involved in the study had been physically hurt by an adult at home in the past month; 72% of the 338 adults surveyed said they sometimes hit, smacked, pinched, kicked or 'donged' children, or pulled or twisted their ears. When asked why parents and teachers might physically abuse children, high proportions of interviewees replied 'discipline' or 'punishment' (37% for parents, 44% for teachers). Three quarters of interviewees working in education said teachers in their school 'hit, smack, kick, dong, pinch or pull or twist children's ears', 31% of children who attended school said they had been physically hurt by a teacher in the past month and 9% of adults said a child in their household had told them about being physically hurt by a teacher in the past month. Children said that the top three implements teachers used to hurt them were an open hand (38%), a stick (32%) and a closed fist (8%) and those teachers hitting children is the number one thing which makes them feel unsafe in schools. Children in conflict with the law were sometimes physically punished in their communities: 4% of community leaders and people working in and with the justice system said physical punishment was used to deal with children in conflict with the law when the police were not involved, 7% said it was used when a case of a child in conflict with the law was informally diverted to the village or community and 5% said it was used when cases were formally diverted at police or court level.

(Source: UNICEF & AusAid, 2009)

The study indicates that corporal punishment is common in both homes and schools. The report is from 2008. That corporal punishment was continuing in 2008 despite a formal / legal ban on the use of this in school is quite revealing.

The Fiji Human Rights Report (2015) suggests that corporal punishment continues in households because of increasing urbanization, overcrowding, and the breakdown of traditional community and extended-family-based structures put children at risk for abuse; these factors contributed to a child's chance of exploitation for commercial sex also.

The second case study concerns a teacher beating students with a PVC pipe.

The Ministry of Education continues to issue notices and warnings against use of corporal punishment in Schools. With reference to the above, the Ministry's permanent secretary stated that teachers found using corporal punishment could face court action and lose their jobs. But despite these warnings, corporal punishment continues, as the third case study shows.

Corporal Punishment- Case Study 2

Teacher arrested for resorting to corporal punishment by Halitesh Datt

The ministry of Education has called on teachers to exercise control rather than resorting to corporal punishment in schools. This comes as a 45 year old teacher in Kadavu is now in police custody for beating two students with a PVC pipe. The students told their parents about the incident and the matter was reported to police.

(Source: Fiji TV, 12 Feb, 2014)

Corporal Punishment-Case Study 3

In July 2015, two students in Vanuabalavu, Lau, were examined by a doctor after they were allegedly beaten by a teacher using a plastic hosepipe. The students attend Susui Primary School. A report filed at Lomaloma Police Station claimed the school teacher allegedly hit one student on the head for having no handkerchief. Then he hit the second student on the buttocks with the same hosepipe because the student did not complete his homework. Lomaloma Police Station yesterday confirmed it had received a complaint. Lomaloma Hospital also confirmed the students were examined, treated and sent home.

(Source: The Fiji Sun, 10th July, 2015)

As with previous reports, the Ministry of Education again issued a harsh statement: 'I'm going to instruct the education officer eastern to look into the matter', said the Acting Permanent Secretary for the Minister. She also reminded teachers of the ministry's zero tolerance on corporal punishment. The ministry, she said, 'had already issued a stern warning to teachers that corporal punishment was not allowed and would not be tolerated. The ministry has a child protection policy, which ensured that the well-being, safety, respect and dignity of children were respected. The Ministry urged teachers to read this policy and take heed of the same (Fiji Sun, 10 July 2015). The Ministry, however, tried to explain the use of corporal punishment: In most cases corporal punishment took place because of teachers' frustrations (Fiji Sun, 10 July 2015).

Responses from Authorities

Fiji's Police have a zero tolerance policy on offences against children. The Police Commissioner has issued a plea to the community to re-

port child abuse. The Commissioner, Ben Groenewald stated the official position of the Police as follows: 'Those people who know about these acts there is an obligation towards them in terms of the Juvenile Act to report this. And I'm pleading to the community that if they hear or see any child abuse they must report it to the police so that we can take action against those perpetrators' (Radio New Zealand (Dateline Pacific), 29 January 2015).

The Fiji teachers' union bodies have also often taken firm positions on this. For the Fiji Teachers Union, teachers have a clear legal obligation to report any evidence of child abuse or neglect to authorities. The Union recognises that corporal punishment in schools has been outlawed for more than ten years. In a Radio New Zealand interview in 2015, Union's Secretary General, Agni Deo Singh stated: 'behaviour management is a challenge for teachers, especially when we have class sizes between 40 and 50 in our urban schools and [with] teachers managing multiple classes in the rural schools. We've had instances where teachers have sort of lost control and gone beyond their jurisdiction, some teachers have been terminated and others have been disciplined.'

The Law on Corporal Punishment

The validity of corporal punishment was considered in at least two African nations. In Namibia case *Ex Parte Attorney General of Namibia, In re Corporal Punishment by Organs of State* [1992] 7 LRC (Const.) 515, and in Zimbabwe *Ncube and Others v State* [1998] LRC (Const.) 442 considered the matters. These cases dealt with the case law on similar constitutional provisions to s25(1) of Fiji Constitution. The relevant constitutional provision in Namibia is: 'No persons shall be subject to torture or to cruel, inhuman or degrading treatment or punishment', while for Zimbabwe, it is: 'No persons shall be subjected to torture or to inhuman or degrading punishment or other such treatment'.

In Fiji, the matter was discussed at length in a landmark case *Ali v State* [2001] FJHC 169; HAA0083 of 2001. Here, on the basis of the 1997 Constitution, Justice Jayant Prakash declared corporal punishment as contrary to the Constitution and thus, illegal: 'It is further declared that the infliction of corporal punishment in schools in pursuance of the Ministry of Education guidelines or otherwise is unconstitutional and unlawful and in conflict with Section 25(1) of the Constitution'.

In this case, the Appellant submitted that corporal punishment was abolished in England by Criminal Justice Act 1967, and that corporal punishment was outdated. He argued that corporal punishment contra-

vened Fiji's constitution because in effect it was a 'torture' as well as 'cruel', 'inhuman' and 'degrading or disproportionately severe punishment'. The Fiji Human Rights Commission also made a submission to the Court, arguing that all corporal punishment, including those in schools, was against section 25(1) of Fiji's Constitution as well as against international human rights law. Section 25(1) of the Constitution stated: 'Every person has the right to freedom from torture of any kind, whether physical, mental or emotional, and from cruel, inhumane, degrading or disproportionately severe treatment or punishment'.

The court considered the fact that the Penal Code provided for the imposition of corporal punishment for certain offences; rape, defilement and certain other offences against morality attracted corporal punishment. So did some robberies and extortion. But manslaughter, which attracted a sentence of life imprisonment, did not have provisions for corporal punishment. No data or information was presented to the Court on the history of corporal punishment, the pattern of crimes attracting corporal punishment and the efficacy of corporal punishment in Fiji. The court took the position that even though the Penal Code allowed for corporal punishment, at best corporal punishment was discretionary, based on subjective value judgments.

As for corporal punishment in Schools, the *Education Act* (Cap 262) did not make any specific provision for the imposition of corporal punishment. However, since 1976 the Permanent Secretary has issued guidelines dealing with corporal punishment. These were published in the Education Gazettes. Circular No. 10 of 1986 (on Corporal Punishment) stated:

It is all too common in schools to see children being subjected by teachers to petty assaults such as striking on the head or hands with a ruler or a pointer, boxing of ears, hitting over the head with the hand and similar forms of cruelty. Habits such as these are the hallmarks of the inefficient teacher. Many teachers seem to regard their pupils as inferior beings who have no rights save those allowed them by the teacher. Children are individual personalities as much as anyone else, even if they are still undeveloped, and should be treated with the same consideration and courtesy as adults.

But despite these enlightened views, the circular accepted that corporal punishment 'is sometimes necessary'. It went on to outline the rules of administering corporal punishment:

(i) Only Headteachers/Principals have the right to inflict corporal punishment, and he/she should satisfy himself/herself that it is really warranted before he/she administers it. No other teacher whether registered or recognised, may inflict corporal punishment.

(ii) Headteachers/Principals may inflict moderate corporal punishment for gross misbehaviour such as bullying, stealing, lying and cheating. However, they are forbidden to punish children so severely that bodily harm is done. They are reminded that they are liable to be summoned before a magistrate and fined for inflicting unreasonably severe punishment on a pupil.

(iii) Corporal punishment should not be given for any form of academic failure.

(iv) When giving corporal punishment only a leather strap should be used. The use of sticks, rods, rulers, etc is prohibited. Slapping, punching, kicking or other forms of direct physical contact are also forbidden.

(v) Punishment for offences committed outside the school grounds should be given only in exceptional cases, e.g. bullying children of their own or another school, throwing stones at buses, houses and other properties, using abusive language, violence and any form of offensive behaviour. In such cases the Headteacher/Principal may find it useful to discuss the matter with the child's parent before inflicting punishment.

(vi) A brief account of any corporal punishment which has been administered must be entered in the School Log Book. The date, pupil's name, nature of the offence and the punishment given should be clearly stated.

The court noted that the Fiji Islands Education Commission discussed the issue of Discipline and Punishment in the wider context of Fiji society. It quoted at length from the Commission report:

Disciplinary matters present a challenge to teachers and principals. There is a high level of tolerance of child violence in society at large. Beating is sometimes justified as an indication of love for one's children. Teachers have tended to use corporal punishment, citing reasons such as "It's the only language they understand".

There are Ministry of Education regulations on corporal punish-

ment, which urge teachers to be sensitive and humane in disciplinary matters, but these are widely recognised as not being heeded. An increasing number of cases of corporal punishment, excessive in the eyes of parents, have been reported in the press in recent times and police have become involved in several cases. As well as very obvious corporal punishment, it is evident that practices such as tweaking ears and smacking with blackboard dusters are common, and are sometimes used on children who have failed to achieve rather than for disciplinary matters.

The Education Commission/Panel further quotes from other reports which need repeating. UNICEF research has found that:

"Classroom violence is common. This reflects the generally-held view in Fiji that parents and teachers can inflict physical punishment and the reluctance of some teachers and parents to respect the views of children. Abuse takes many forms from actual physical assault, verbal assault and humiliation.

These punishments develop low self-esteem in children and this is known as poor achievement. There is concern that corporal punishment and psychological abuse is particularly rife in Fijian homes and schools and is a factor in the lower achievement of Fijian students. The situation is difficult to change, given the community acceptance of violence.

Schools should be promoting self-control and self-discipline and acceptable forms of behaviour. Students and teachers can be guided in conflict resolution so that they can confront and control their emotion and anger. Schools need to develop non-violent means of disciplining students, as violence only breeds more of the same, giving the impression that violence itself can solve problems. There is a range of non-violent disciplinary actions that may be employed by teachers and principals. These include physical work such as weeding, detention, suspension and exclusion from school, with expulsion as a last resort. Shaming is commonly resorted to, but it can be seen as a form of abuse, especially when it involves public humiliation (Education Commission, 2000: 105, as quoted in *Ali v State*).

The court also relied on a 'Save the Children Fund' report and noted that 'classroom violence is effectively condoned in that few parents complain about it. They themselves believe that this is a correct form of punishment, or they hold the teachers in too much respect to question their methods, or fear that by complaining they could make the situation worse

for their child. Many children are too frightened of both the teachers and parents to report the abuse in the first place'.

The court declared corporal punishment illegal. Its reasoning is worth quoting at length; this is presented in Box 4:

Text Box 4: Justice Prakash on Corporal Punishment

It is clear that corporal punishment is a violent means of resolving conflict/tension. There is need for alternative means to deal with discipline and conflict. The Fiji Women's Crisis Centre has also recommended the abolishment of corporal punishment in schools as a result of its research and wider experiences with domestic violence and sexual assaults. It has stated:

"Corporal punishment is a means by which the concept of violence is used as a form of punishment or a means by which conflict resolution is reached through punishment of the offender. Although its use has been limited to head teachers and principals in schools, numerous media reports highlighting cases where in the name of 'corporal punishment' students suffered severe physical abuse by teachers. *As such it must be totally abolished and more constructive forms of discipline or behaviour management should be implemented.*" (Incidence and Prevalence of Domestic Violence and Sexual Assault: A Research Project of the Fiji Women's Crisis Centre, 2001, emphasis added).

The Education Commission/ Panel also recommend that: "The Ministry of Education actively encourages schools to have expedient disciplinary policies. It should continue with its policy of not allowing corporal punishment and should actively foster alternative forms of discipline" (p115). The Court is not aware that the Ministry of Education does not allow corporal punishment since the guidelines quoted from the Education Gazettes suggest it is allowed by Principals & Headteachers. There is no indication that the guidelines have been withdrawn.

The Court is also aware that the Children's Co-ordinating Committee in 1999 recommended the abolishing of Corporal Punishment in school. This was in view of Section 25(1) of the **Constitution** and Fiji's obligations under the UN Convention of the Rights of the Child (CRC). Section 28(2) of the **CRC** states:

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

Section 19 of CRC further states:

- (1) State 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.
- (2) Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and as appropriate, for judicial involvement.

The High Court has previously expressed opinions about corporal punishment in schools especially when teachers have come before the Court on charges of assault. Justice Pathik in considering an appeal from the Magistrate Court stated:

"It is a matter of comment that if the approach of the learned Magistrate is correct then Headteachers run the risk of being prosecuted as in the case when they inflict corporal punishment, for injury of some sort is bound to be caused. Lest this should happen again in future, *I suggest to the Ministry of Education to reconsider the provisions relating to "corporal punishment"*. By having such a provision in the Gazette, and in case the law takes no note of that, as in this case, the Ministry is a vehicle which could be seen as facilitating the dismissal of a Head Teacher from service and this would ruin the teacher's career altogether" (*Mul Prasad v State* Cr. App. 37 of 1997, emphasis added).

According to information available to this Court the last Ministry of Education circular on Corporal Punishment was contained in Education Gazette (Term II, 1997). It is clear that the case law from other jurisdiction support

the abolition of corporal punishments in schools. The Education Commission/Panel, the Children's Co-ordinating Committee and the Women's Crisis Centre also support its abolishment.

As with corporal punishment under the *Penal Code* there is no consistent and coherent principle as to the basis of corporal punishment in schools.

It appears that since the beginning of schools in Fiji corporal punishment was seen as a valid form of discipline. Since parents used to beat their children at home it was acceptable that teachers, who have traditionally been held in high regard in the wider community in Fiji, could do the same. However, in recent years such values have changed with many parents, especially educated ones, not happy with their children being hit by teachers or other close relatives. The common law right of parents to discipline children as they wished is also being tempered with by enlightened educational policies. In Australia and other Commonwealth jurisdictions the law is beginning to fetter the discretion of parents to use force to discipline children or what are reasonable and lawful punishments.

The European Court of Human Rights has considered the issue in relation to a nine-year-old child who was beaten by his stepfather. The Court stated that article 3 of the European Convention of Human Rights "*--- required states to take measures designed to ensure that individuals within their jurisdiction were not subjected to torture or inhuman or degrading treatment or punishment, including such ill treatment administered by private individuals --- Children and other vulnerable individuals, in particular, were entitled to state protection in the form of effective deterrence against such serious breaches of personal integrity*" (A v United Kingdom, Case No 100/1997/884/1096. Reported in the Times Law Reports - European Court of Human Rights, October 1, 1998).

Whether it is corporal punishment by judicial authorities or administered by schools under authority of a Minister the Courts have stated that similar principles apply. In the Juvenile's case the Chief Justice of Zimbabwe stated:

"in a system which has formal rules on corporal punishment drawn by a competent authority, the same considerations governing judicial corporal punishment must apply" (p.789).

The Namibian Supreme Court in Ex p. A-G referred stated:

"The differences between adults and juveniles which appear from the relevant statutes and regulations with respect to the manner in which corporal punishments is administered are --- insufficient to convert punishment which is degrading or inhuman for adults into punishment which is not degrading and inhuman in case of juveniles. Such punishment remains an invasion on human dignity, and unacceptable practice of inflicting deliberate pain and suffering 'degrading to both the punished alike'. Even in the case of juveniles it remains wide open to abuse and arbitrariness; it is heavily loaded with retribution with scant appeal to the sensitivity and rational responses of the juvenile" (p.5333).

It is quite clear that the common law rights of parents to discipline their children cannot be compared to disciplining of children by teachers. Teachers have no such rights. It is questionable whether parents can delegate such rights. In any case the authority in Fiji is derived from an administrative circular issued by the Ministry of Education. Even if the motive for corporal punishment in schools is to achieve some laudable objectives the punishment cannot be authorised by law: "*Means otherwise unauthorised by the law do not become authorised simply because they seek to achieve a permissible and perhaps even a laudable objective.*" (Van Eck No and Van Rensburg No v Etna Stores 1977 (2) SA 984 at 996, 998, quoted in Ex p A-G (Namibia) (p.532).)

Children have rights no wit inferior to the rights of adults. Fiji has ratified the Convention on the Rights of the Child. Our Constitution also guarantees fundamental rights to every person. Government is required to adhere to principles respecting the rights of all individuals, communities and groups. By their status as children, children need special protection. Our educational institutions should be sanctuaries of peace and creative enrichment, not places for fear, ill-treatment and tampering with the human dignity of students. It is clear that the Ministry of Education is aware of progressive education policies. It itself admits:

"Excessive use of punishment is a general sign of teacher incompetence. If pupils are inattentive, noisy, frequently late or absent from the school, the teacher should try to establish the causes. The fault need not always be that of the pupils, it could be the teacher's as well. The remedy is not to beat the pupils but to make school life and work attractive and interesting to ensure that pupils are happy and busily engaged all the time.

Child counselling and parental involvement should be resorted to first in order to improve pupils' conduct." (Education Gazette Vol. LXVI No. 2 Term II, 1995).

It also recognised the rights of children as far back as 1986. It had stated:

"Many teachers seem to regard their pupils as inferior beings who have no rights save those allowed them by the teacher. Children are individual personalities as much as anyone and courtesy as adults". (Circular No. 10/86, Education Gazette 1986 emphasis added).

It is not clear why with such enlightened views the Ministry of Education has not taken a more pro-active role in completely banning corporal punishment in schools. The Education Commission/Panel has also called for

enlightened policies on school discipline. So have other relevant institutions such as the Women's Crisis Centre and the Children's Co-ordinating Committee. This Court, in view of its obligations under the Constitution, cannot condone such punishment.

The Fiji Court of Appeal in Umesh Kumar had expressed its doubts about the constitutionality of "any corporal punishment". Under Section 21(3) of the Constitution laws made, and administrative and judicial actions taken after the commencement of this Constitution are subject to Chapter 4 (Bill of Rights). Under Section 195(3) written laws are to be construed with such modifications and qualifications as are necessary to bring them into conformity with the Constitution. In exercise of its powers under Section 41(3) and 195(3) of the Constitution the Court rules that corporal punishment [...] under any administrative guidelines or otherwise enforced in schools is unconstitutional.

On the basis of the above, the Court ruled that 'the provisions on corporal punishment under the Penal Code and the Criminal Procedure Code breach section 25(1) of the Constitution and are, therefore, unlawful'. It declared infliction of corporal punishment in schools as illegal.

The judgment was not appealed or challenged. Corporal punishment in schools, therefore, remains illegal.

A challenge to the declaration by Justice Prakash could possibly be made. The declaration was made on the basis of the 1997 Constitution. Fiji now has a new constitution, put in force from 2013. Section 11 of this constitution has exactly the same wording as Section 25 of the 1997 Constitution. In addition, Section 41(d) provides that every child has the right 'to be protected from abuse, neglect, harmful cultural practices, any form of violence, inhumane treatment and punishment, and hazardous or exploitative labour.

However, the 2013 Constitution provides for possibilities for limitation on its application which are not present in the 1997 Constitution.¹ Section 6(4) provides that the application of any provision of the bill of rights, including section 11 and 41 may be limited by:

- (a) limitations expressly prescribed, authorised or permitted (whether by or under a written law) in relation to a particular right or freedom in this Chapter;
- (b) limitations prescribed or set out in, or authorised or permitted by, other provisions of this Constitution; or

¹ I acknowledge Dr. Ganesh Chand for bringing this matter to my attention.

(c) limitations which are not expressly set out or authorised (whether by or under a written law) in relation to a particular right or freedom in this Chapter, but which are necessary and are prescribed by a law or provided under a law or authorised or permitted by a law or by actions taken under the authority of a law.

Thus, were the Ministry of Education to again put in place a policy on Corporal Punishment which allows for this in schools, a case could be made that the policy will prevail over the provisions of the Constitution.

The Ministry presently (2016) has a policy named 'Child Protection in Schools'. Under this, the Ministry states that it has 'zero tolerance on abuse'; it specifically disallows 'hitting, pinching, spitting shaking, throwing, smacking, punching, kicking, shoving, poisoning, burning, biting, scalding, suffocating, and drowning'. This is, however, a Ministry policy. It is subject to change; the Minister and the Permanent Secretary are the 'ultimate authorities for [the] policies. They approve, deny, or return for further review/revision [the] policies generated by the relevant owners' (MOE, 2013). The policy on corporal punishment, therefore, could possibly be amended, a new policy recommendation bringing back the earlier policy on corporal punishment could be approved. The policies would over-ride the Constitutional provisions on corporal punishment.

Guidance and Counselling to Tackle Discipline

It is recognised that discipline in schools is a desired objective. But the law does not allow discipline to be achieved through corporal punishment. This leaves other corrective measures to be taken to address the issue. There are two broad corrective measures.

First, the onus falls on teachers to minimise their frustration with children's discipline issues. This can be achieved to at least some extent through occupying children with meaningful learning activities, adopting or developing teaching methods which make the subject interesting and appealing thereby curbing disorderly and noisy behaviour during class, thorough preparation of their lessons, and seeking and using adequate teaching aids. Being sympathetic with remaining defaulters may also have a positive impact.

The second approach is through guidance and counselling.

Counselling in schools has three functions: an *educative* function, i.e. to develop students personally and socially in the context of the school; a *reflective* function, which is the exploration of the possible impact of and contribution to personal and social development and mental health of practices in the classroom and other aspects of the school com-

munity; and a *welfare* function, which is the responsibility to plan for and react to issues which impact on students' welfare (McLaughlin, 1993).

Fiji has adopted counselling as a part of its policy. The Ministry's policy on child protection in schools requires the Ministry to provide strategic counselling services to all students through placing full time counsellors at the Ministry's 9 District offices (who are required to reach out to schools with any serious case), and to equip every teacher with basic counselling skills.

Counselling defaulters is now the accepted teaching technique. The Ministry, through a media release by the Minister, requested teachers to hold more counselling sessions. 'Because of the sensitivity of some of the issues, they will have to go beyond group counselling and have one-to-one sessions with students who are suspected of having some deep-seated problems' (Rawalai, 2015).

The processes of counselling emphasizes the importance of developing good relationships based on trust, respect and listening. Students need to be listened to in order to affiliate with, and to make students feel valued by teachers. Initiatives which have emphasised and developed teachers listening to and involving students in the processes of school life need to be built on and developed. The issues of how inclusive schools are, and what teachers have responsibility for, also needs to be addressed.

Black & William (1998) show that counselling skills and processes have a role to play in learning as well as in developing the school as a guidance community:

Learning is driven by what teachers and pupils do in classrooms. Here, teachers do have to manage complicated and demanding situations, channelling the personal, emotional and social pressures amongst a group of 30 or so youngsters in order to help them to learn now and to become better learners in the future. The evidence seems to be that we need to develop the role, skills and pedagogy of counselling, not to restrict it. The needs of young people in the context of a personally and socially complex society, which is aiming to become a learning society, require us to develop and integrate counselling theory and skills into the role of all teachers, not compartmentalise it. Recent reforms have not made these tasks easy to accomplish. We must be very polite and humble in our dealings. Do take considerations of broken homes, environmental factors, mode of travel, family survival routine, availability of stationery and texts and the study facilities at home, parental guidance / involvement for betterment of children's education. At the same time we must gain the confidence of the public by being part of them, a leader/ a guide/ a commu-

nity worker. We must take necessary steps in fund raising for community projects. Work with harmony. Never irritate the public by our unseemly behaviour and outbursts. Keep a high profile of our moral standards at all times. Our appearance and dressing up should be acceptable to the general public. "Do in Rome as the Romans do" and also we should bear in mind that Rome was not built in one day (<http://www.trivia-library.com/b/origins-of-sayings-when-in-rome-do-as-the-romans-do.htm>).

Concluding Remarks

Despite the efforts by the government to curb the use of corporal punishment in schools, the practice has persisted in schools in Fiji. Every now and then there are reminders in the Education Gazettes regarding inflicting corporal punishment. Without a challenge, the law on corporate punishment is also clear. But teachers still resort to corporal punishment to deal with student discipline problems. It is proposed in this paper that guidance and counselling should be the alternative to corporal punishment in combating the problem of poor discipline, disrespect and other similar problems in schools. It is a way forward for holistic teaching and learning to take place.

However, the major challenge that teachers face in using alternative approaches to discipline is that it is time consuming and slow in effectiveness. There is also a lack of cooperation from parents. There are differences in understanding of various stakeholders on student discipline and behaviour. This strains relationships between and amongst teachers, students, families, school administration and the ministries. Counselling has an important part to play in enhancing both learning and effective schooling. But there is a need for adequate well trained and experience professionals to handle guidance and counselling in schools.

Certain measures could produce effective results. First, schools without any discipline policy ought to produce comprehensive policy documents on student discipline for their schools. These should be provided to each parent and student, with regular information sessions on these. Second, an entire school community approach needs to be considered in creating a school environment which is safe and conducive to learning. To provide a whole school community approach schools should make sure that all stakeholders such as teachers, students, parents, school management and school community representatives are involved in setting and reviewing the discipline policy, rule and code of conduct that are used in individual schools.

Third, all school staff should be given sufficient training and workshops on an ongoing basis on matters concerning discipline. This will help them to become better informed on the use of disciplinary approaches that work effectively. It will also help them to learn new ways of considering solutions to disciplinary problems.

Fourth schools need to organize training for students on social skills and self awareness on a regular basis to help them in becoming more responsible members of the school community. Teachers would need to teach students core values of life by incorporating within their curriculum lessons that will aid students develop responsible behaviour. Teachers also need to serve as a role-model to the students.

Fifth, the Ministry of Education should provide guidelines for teachers on proper discipline strategies to be used in schools, as well as facilitate teacher training on the use of the designed strategies to help them in implementation of the guidelines.

Finally, there is a need to commence and continue detailed research on all matters relating to student discipline, including those related to perceptions of parents and other stakeholders regarding effectiveness of alternatives to corporal punishment in handling student discipline. Ongoing research and learning has no substitute in reforming approaches to matters concerning student discipline

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