

# The situation of children in england law family essay

Law



The first issue to discuss about is the right of protection which gives protection to the children to ensure about their safety, dignity, survival and development. Children's rights cannot be separated from Human Rights because children should deserve same human dignity as adults deserved[1]. UNCRC stands primary source of the rights of protection for the children. Article 17[2], 19[3], 32[4], 34-37[5] of UNCRC provides protection rights to children. Physical Punishment included corporal punishment, smacking, slapping or force child to eat soap. Currently in UK, Physical Punishment is banned in schools, while Physical Punishment is lawful by parent or guardian in home or private foster care. And therefore, as long as the punishment is reasonable, and the injuries must be very minor and transitory. Under UK law, common assault is an offence that it is a less serious form of assault under Section 39 of Criminal Justice Act 1988, such as kicking, slapping or punching, repeating assault the child, etc. A defence could be liable if the defendant can prove that the common assault to the child is a "reasonable punishment", this is illustrated from Section 58 (S58) of Children Act (CA) 2004. Teachers are forbidden to use physical punishment to child under 16 years old, as stated from Section 1(1) Children and Young Persons Act 1933. And this was confirmed by the case of Williamson and others[6], the court concluded that teacher remain their role as a teacher at school even the conduct was acted in the favour of school. Physical punishment will only permitted when it is necessary and must be reasonable. The court's decision was complied with European Convention on Human Rights (ECHR). However, an issue had raise to UK government's failure to provide adequate protection for children, it was established in the case of A v UK[7]. The European Court

of Justice (ECJ) indicated that the UK government had failed in respect of constituted a violation of Article 3 of the ECHR as prohibiting any inhuman and degrading treatment or punishment to any person. Due to the majority verdict in the court and the defendant had applied to ECHR, he was acquitted. It is arguable that UK government should narrow the defence of 'reasonable punishment'. The offender had evaded from criminal liability very easily to such broad scope of defence. In the case of *R v H*[8], the judge had directed the jury to take the following factors into account to consider whether it could constitute as reasonable chastisement: the defendant's behaviour; the duration of the punishment; the physical and mental impact of the child; the age and personal characteristics of the child; the reasons of applying punishment to the child. It was very difficult for the parents to judge whether or not the punishment is reasonable because when the parent consider of the children's reaction to the punishment, the question raise that it is unpredictable whether or not the child is vulnerable to the punishment. S58 of CA 2004 could eliminate the defence only when it was a serious assault. On the other words, the defence can be used when committed common assault. Such as smacking, hitting the child with a stick, or force the child to eat soap. S58 of CA 2004 did not clarify whether it allows reasonable chastisement. The UK government was also unclear whether or not smacking is legal. S58 should divide the line between reasonable punishment and assault. S58 of CA 2004 remains very difficult provide Child's protection due to many uncertainty issues. For instances, smacking the child became a long term punishment to the child and escalated to serious assaults; child though punishment are permissible therefore they did not complaint; S58 did not

provide protect children from serious punishment that feels painful, humiliating, degrading, etc. The review of S58 written by the Department of Schools of Families and Children, S58 of the Children Act 2004 Review (consultation) Analysis of responses to the consultation October 2007 explained that the current legal position of S58 is very clear and remains a very ambiguous position whether or not smacking to children. It is arguable that child and adult should not be treated as different class of human that they should treated as equal class that no one will not have feeling when someone smack your face as they think that the smacking means nothing to you. " If it is not permissible to beat an adult, why should it be permissible to do so to a child? One of the contributions of the CRC is to call attention to the contradictions in our attitudes and cultures.[9]" UK government should remove the defence in S58 that it is unacceptable in any circumstances to assault another person and to tighten the legal defence in order to prevent any offenders to escape from conviction. In UNCRC under Article 19(1) and 37 had focused on corporal punishment as to provide protection against harmful treatment towards the children. Under Article 19(1), it focused on how child treated and protected from human degrading treatment and harmful treatment, complied with child rights approach such as welfare approach. And Article 37 stated that the State Parties should ensure no punishment or inhuman or degrading human treatment toward children. Before S58 had formed, the Concluding Observations 2002 by Committee on the Rights of the Child had recommended that State Party should promote positive form of punishment to the child as to respect to human dignity and recommended that State party to remove the reasonable chastisement

defence. This had followed by its Concluding Observations 2008 remained its position to remove the defence, however, the defence was not removed by CA 2004. The Committee had defined the corporal punishment in the General Comment 8 in 2007, stated that "any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light". Such as hitting, smacking, kicking, shaking or throwing children, etc. The Committee also considers other kinds of punishment constitute to be cruel and degrading. The General Comment 8 had mentioned that physical punishment is a degrading treatment and recommended physical punishment should be banned. They emphasized that the best interest principle does not justify this kind of treatment as against the children and create a great impact to their development. The Welsh Government (WG) approach had been using the policies under UNCRC as a fundamental framework for creating children's rights[10]. UNCRC tends to be more Welfarism that considers the benefits for the children. WG shows that their children's rights approach is more UNCRC compliant, the WG always emphasizes to place children's priority at first and stresses that children should have basic entitlements of rights to receive the services of which they were entitled. The Protection Rights for children in England and Wales has not sufficiently provided protection rights as the defence of reasonable chastisement has not been removed yet. This has been argued by the UNCRC in 1995[11] that it is unequivocal to allow corporal punishment to be against children. And the debate which has discussed whether the government should restrict corporal punishment has concluded that there will be no change for the current legislative session until 2016. The WG had supported

to remove the reasonable chastisement defence, however they have no power to change the law. The Committee showed a positive response to the WG approach in 2008 that suggested removing the 'reasonable chastisement' defence in the Concluding Observations[12]. The WG 2009, Getting it Rights Action Plan stated that " Working to make physical punishment of children and young people illegal in all situations'. Moreover, the WG had responded that they want to remove the 'reasonable chastisement' defence to prohibit all physical punishment against children. The WG does not have sufficient power to remove the defence. The majority of Assembly Members had passed the motion and request to urge the WG as they emphasised to end the lawful chastisement of assaulting the children. [13]The WG had supported to reform as to remove the defence of reasonable chastisement, but they had failed to bring further legislation as they have no power to change the law. This could be seen as that the WG were attempting to go further than England and Wales of children's rights strategy that Wales as they wanted to reform the current law to remove the reasonable chastisement defence. And, they were willing to use the UNCRC policy as the foundation for children's rights to bring welfare to the children in Wales for their best interest and positive development. The second issue to discuss is the Provision right of children which related to the contributions of welfare to their development and better environment. There are many factors that children were always seen as a very weak participator in the society, such as children does not have a voice in the democratic process. However, the Provision rights would ensure children's interest can benefit from the political process which was aimed to tackle one of the important issues: Children's

Poverty. UNCRC is also the primary right of provision rights which could be found in articles: 6(2); 23(2); 24; 26; 27 and 28. In 2007 UNICEF[14] released an overview that it had mentioned UK is one of the high rates of child poverty in the developed world. The experience of poverty in the early age of children would damage their development. Such as education, health. Children are very vulnerable; they would easily get involved into committing crimes, drug dealing or drug abuse. It could be seen as tackling the problem of poverty is a protection to children because poverty could be involved into many areas. Such as the violation of human rights. The Committee on the Rights of the Child did not punish any General Comment regarding to the issue of poverty. The issue was only been known as a large risk of children excluded from services and will be very vulnerable. The Committee had also linked the problem of discrimination with poverty that could cause unequal treatment to children. In 2008, the Committee recommended in the Concluding Observations (UK) that the State party should distribute the resources to a maximum extent for the children in order to extirpate the issue of poverty. And they indicated that the State party had responsibility to ensure to provide resources for the rights of the child.[15] Under UNCRC, article 26 had stated that States Parties should acknowledge child's rights to benefit from social security and social insurance and take any necessary measure into account in regards with the national law. And article 27 had summarised that the State Parties to acknowledge the right to have a standard of living for children in positive development. Regarding to the General Comment 7, 2005. At para 26 which focused on the issue of Standard of living and social security. It emphasized that children grow up in

poverty could undermine the children's welfare and being excluded by the society which heavily damaged children's opportunities for education and future development. It suggested the States Parties to provide any possible support in relation to children's poverty in their early age. Any possible support included "material assistance and support programmes" which provides to children and their families. When the parent had failed to provide resources to the child such as having difficulties to take care the child's needs, then the State will have an obligation to provide resources to the child. In UK, the Child Poverty Act 2010 had required the UK government to tackle the issue of poverty by 2020 and listed the following targets: First, reduce the rate of poverty to less than 10 per cent of children in relative to living with low-income. Second, reduce the rate of material deprivation to less than 5 per cent of children's living. Third, reduce the rate of children who live in 'absolute low income' to less than 5 per cent. Fourth, reduce the rate of children who live in poverty for three out of four years. And in 2013, The End of Child Poverty reported that 30 per cent of children in UK were still living in poverty[16]. The approach to tackle child poverty in Wales had showed the intention to bring child away from poverty. The Welsh Assembly Government (WAG) had developed their first child poverty strategy as it focused on the control of education, health, social care and transport. This could be seen that the WAG were adopting children's rights approach in Wales. Wales is one of the poor state in UK and the standard of child poverty is lower than the UK standard. The WG has developed to take over the control of many policy areas to tackle the issue of child poverty. Such as, education, health and housing, etc. The WG had published a strategy of 'A Fair Future for Our



Children' in 2005 in order to tackle the issue of child poverty in Wales and set out to eradicate the issue by 2020. The strategy had illustrated 4 targets to achieve. First, tackle the issue of income poverty in order to produce and gain more children opportunities, and offer a better job opportunities for the adults. Second, offer more social activity to allow the family and youngsters get involve in order to reduce participation poverty[17]. Third, the WAG's National Service Framework offer the access of services for Children and Young people. The Measures included: providing a new guidance to the schools to associate into the facilities, providing " Parenting Action Plan" for the parents to develop their parenting skills, offer a better access to the health services to reduce the delays in children's health development, and promote the education of prevention of domestic violence. Fourth, set out the new measurement in order to monitor child poverty which combined the income and unemployment data, and other benefit claims and deprivation indicators in order to produce a clear picture of the situation and the progress of the plan to tackle child poverty. The WG had also introduced 'the Children and Families (Wales) Measure 2010' which the Welsh Ministers were asked to work with their duty to make and publish a child poverty strategy and require the public authorities in Wales to join the child poverty strategies with their Children and Young People's Plan. This strategy had illustrated that the WAG had a very clear focus in Wales and that this strategy had in fact improving the children who live in disadvantaged condition in Wales. In 2011, the WG published the 'Tackling Poverty Strategy 2012-16' and the 'Child Poverty Strategy 2011' as they have aimed to eradicate the issue of child poverty in Wales and decrease the rate of child poverty to no more

than 5 per cent of the child who live in a low income family. Compare this strategy plan to the 2005 strategy plan, the four goals did not remove from their target. This strategy plan had concluded that the income-maximisation and their support programmes would provide the best short-term solution to mitigate poverty. The support programmes will be ran with long-term interventions such as education, offering employment and providing health services in order to eradicate the poverty for long-term effect. The duties of the Welsh Ministers by the Measure reflected their important duties in UK; the Child Poverty Act 2010 which published the child poverty strategy and national poverty targets. The Welsh Minister has little prospects since they have a target to their duties. However they do not have the power to do so. The WG in fact has the power to remove the defence of reasonable chastisement. However they have no control over economic policies. There are many disadvantages that against the aim of the WG, the public expenditure of the coalition government has been cut the amount of money that it was available for the WG to spend in Wales. And the consequence of the reduction of the expenditure that affected many families in Wales that they cannot eradicate from poverty. The enactment of the Rights of Children and Young Persons (Wales) Measure 2011 has been introduced to impose a duty and obligation to the Welsh Minister and the First Minister to have due regard to the UNCRC when making or advising policy within the Wales. It has been argued by some minister that the income inequality does not have anything to do with child poverty. In fact, inequality matters to child poverty that damages their social cohesion and has a great impact to their development. It is a big challenge for the WG to meet the target of

eradicating child poverty by 2020. It has been mentioned that to reduce child poverty is a ambitious programme either in Wales or at UK levels of governance comparing to the their strategy of child poverty. The WG used the UNCRC as the framework for the strategy for the young people and children. The UNCRC was used as a core element for the making and advising policies. The WG had managed to make the general measures that based on a rights based approach in order to outline a more efficient policy to tackle the issue of child poverty. First, they had established a range of structures and mechanisms in Wales which related to children's participation support and decision-making by the government. It had included the " Funky Dragon" of the national children and young people's assembly, the youth forums and school council in the majority of the schools in Wales. Second, the WG had analysed the expenditure and demonstrated the proportions of the total budget for the children as prompted by the reporting process of UNCRC. The WAG National Action Plan on Children Rights (2009) had committed to the government to increase the transparency of all the public expenditure as there is a potential impact to children. Third, the WAG had published a report in 2008 about the well-being of children and that the Well-bring Monitor had been set to update every three years intervals and the last updated data was in 2011[18]. The above measurements had reflected a proposal of offering opportunities and had recommended to maximise the resources with the government in Wales. The Rights of Children and Young Person's (Wales) in 2012 had announced the impact of the assessment of children's rights on the WG and recommended that the impact of the assessment should work effectively to encourage co-operating with the

government to ensure the children and young people who are living in poverty remain clear and visible. It is clear that the WAG had adopted a children's rights based-approach to tackle child poverty in Wales. Wales has been trying to bring the child who lives in poverty to the standard of living as they have the strategy plan to target to eradicate child poverty. However, Wales is one of the poorest States in UK that it is very difficult to meet the target in a very short period. Moreover, compare UK's approach and Wales approach; the Wales is more UNCRC compliant that the WG had the control of many areas to tackle the issue of child poverty, such as housing and health. They had also published many strategies in relation to child poverty in Wales. Moreover, the WAG had take their responsibility to support the parents to ensure adequate provision that had provided to the child. This had made a great outcome that reduced many inequalities treatment to children, and decrease the discrimination in the situation of education, health, transport that could increase the children's participation rights. They had established a very strong relationship between the government and the local organisation in Wales, this had shown that there was a difference between UK government's approach and WAG's approach. The WAG had incorporated the provision of UNCRC into Wales and made advantages of the relationship between the local organisations and agencies to build-up better opportunity for the children in Wales. In conclusion, Wales has been adopted a children's rights based approach over the past 10 years that included making the policy of different concern to the children in Wales. On the issue of protection of physical punishment of children, the Wales has adopted the policies from UNCRC as the primary framework of the Child's Rights.

However, the fact that UK's situation is far behind the standard of the policies from UNCRC. And Wales had attempted to work harder within the limits of their legislative powers in Wales. On the other hand, the issue of provision of child poverty, the Wales has adopted the policies from UNCRC as the primary framework of the Child's Rights as well. And Wales had tried to build more political recognition of child poverty that gone beyond the England and Wales children's rights approach as a whole.