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### Smacking and the Law — a European Perspective



*Ruby Harrold-Claesson, a Swedish lawyer and President of the Nordic Committee for Human Rights, reflects on the impact of anti-smacking legislation in Sweden and beyond.*

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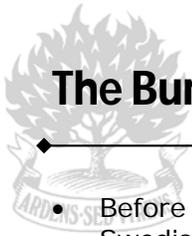
The EPOCH (End Physical Punishment of Children) Bulletin dated July 2000 states:

“In the following nine European countries there are explicit bans on corporal punishment by parents and all other carers: Austria (1989), Croatia (1999), Cyprus (1994), Denmark (1997), Finland (1993), Germany (2000), Latvia (1998), Norway (1987), Sweden (1979). In addition, in January 2000 a judgment of Israel's Supreme Court effectively banned all corporal punishment, and in 1996 Italy's Supreme Court in Rome declared all corporal punishment to be unlawful.”

However, not all is as it might at first appear. Back in 1991, EPOCH claimed that Denmark had already passed a law against smacking. In reality, however, Denmark did not pass such a law until 1997. And while EPOCH assert that Finland passed its anti-smacking law in 1993, the truth is that Finland passed its law in 1984. Many other examples of inaccuracies in EPOCH's literature could be cited, which gives rise to the question: Can we trust the claims made by EPOCH? And what are their motives?\* I have previously written several articles about the Swedish law of 1979. My experience of cases where parents have used physical punishment of their disobedient, unruly and even potentially delinquent children, aided and abetted by their day-care givers, school teachers, social workers and the law enforcing authorities to report their parents to the police if they should dare lay hand on them, is that the law is a disaster for children and their families, but a great success for the system. It gives the social workers, police and prosecutors easy work. The repressive authorities no longer seek to fight crime in the society the family is the main prey.

Consider the following facts:

- The Swedish law on the abolition of the physical punishment of children has resulted in hundreds of normal parents being harassed by the police and social authorities, prosecuted, sentenced and criminalised, because they have smacked their children for bad behaviour.
- The claim made by EPOCH that only one Swedish parent has been prosecuted for smacking a child since 1979 is far from the truth. In reality, there have been hundreds of cases, but they are difficult to trace because they appear alongside cases of assault and battery.
- While having the appearance of being altruistic and humanitarian, the 1979 law has led to unwarranted interference in private and family life, and has caused serious damage to the relationship between parents and their children, to the detriment of the family.



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- Before the Bill abolishing the physical punishment of children was presented to the Swedish Parliament, several leading lawyers expressed strong misgivings. Their fears that the law would lead to prosecutions of parents who employed mild physical sanctions, while doing nothing to reduce the number of cases of genuine child abuse, have materialised.
- Parents belonging to ethnic minorities and parents with strong religious convictions, in particular, have been victimised under the 1979 law.
- The social authorities and the courts enforce the law concerning the child's right not to be subjected to physical punishment, irrespective of what the child has done. Many Swedish parents are therefore afraid of their children and dare not correct them for fear of being reported to the police, indicted and fined or sent to prison.
- The law against physical punishment does more damage to children than a smack from a mother or father. When the authorities intervene in the life of a well-functioning family, its life is destroyed. There is nothing that can mend the resulting hurt, pain and bitterness, and the children are the losers.
- When children are removed from their supposedly 'abusive' parents and taken into care, they suffer the torture of forced separation from parents, brothers and sisters, and other relatives and friends. They are also exposed to the risk of real abuse. Such children are frequently subjected to physical, mental, and even sexual abuse, but social workers and the police seldom listen to the complaints of children in care (cf. The Waterhouse Report).
- The 1979 law has caused incalculable damage to countless families where allegations have been made and investigations carried out, even where the charges have been dropped at an early stage.
- The law has given rise to cases where children have accused their own parents of ill-treatment, without appreciating the consequences of their actions. The public prosecutor then takes over the case and may pursue it even where the parents deny any abuse and where children withdraw their accusations. In this way, the legislation has been directly responsible, not only for the destroying relationships between parents and children, but also for the break-up of many marriages and families.

The damage caused by this legislation is so serious that it should not be followed by any civilised country. Rather, Sweden needs the help of other nations to have this destructive legislation. In July 1979 the Swedish parliament passed legislation banning physical punishment of children to mark the United Nations Year of the Child. When the law was presented to the international arena the spokesman for the Swedish government wrote: "This provision does not represent an extension of the punishable area. It is still the provisions of the Criminal Code which will decide whether an action shall be subject to penalty or not." To the Swedish population the law was presented as a 'recommendation' and placed in the Parents and Guardianship Code, not in the Penal Code. The Standing Law Committee made it quite clear to the Parliament that if the parents' rights to use physical punishment were abolished by law, the laws of the Penal Code were the only laws that would be applicable.

Following the passing of the law, a group of parents submitted a complaint to the European



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Commission of Human Rights in 1979 (Application 8811/79). The European Commission declared the parents' complaint inadmissible in 1985 since the Swedish government had claimed that the law was a *lex imperfecta* and that no parent would ever be charged under the law. My reaction to this is that unfinished laws have no place in civilized democratic societies and one would have expected a similar response from the European Commission. The Swedish government also omitted to inform the European Commission that a teacher in Gallivare\*\*, in the north of Sweden was being prosecuted for having smacked his 12-year old son's bottom. In this case - and in all similar cases - the courts have shown that they follow the desires of the Swedish legislator, which is to punish parents who physically punish their children, no matter what the child has done and no matter how slight the punishment to the child might have been. Unfortunately, the European Commission failed to examine the Gallivare case, which was the only one that made news headlines internationally. Since then hundreds, perhaps thousands, of parents have been prosecuted in Sweden, and their children have been removed from their care and placed in foster homes, causing severe trauma to the children and their parents. The parents and children who have firsthand knowledge of the law know therefore that it is not a recommendation, but a harsh law that breaks up their families.

Recent investigations (SOU 2001:18 'Children and abuse') show that of a population of 2000 university students 300 admitted to having been physically punished as children. Evidence on Swedish trends indicates sharply increasing rates of physical child abuse, at least in criminal records of assaults by relatives against children under the age of 7. This frequency increased from 99 in 1981 to 583 in 1994, an increase of 489%.

### **Finland**

The first country to follow Sweden's example was Finland. Finland passed its anti-smacking law in 1984 and not in 1993 as EPOCH claims - i.e five years after the Swedish law was passed. So far there is one famous case where the Supreme Court found a step-father guilty of slight abuse and he was fined - under that law - for pulling his step-daughter's hair and 'flicking' his finger in her face.

### **Norway**

The second country to follow was little brother Norway in 1987 - eight years after Sweden. From my research I have found that the Norwegian anti-smacking law has been invoked in one case where a child had been severely neglected, but the parent had not struck the child.

### **Austria**

Austria passed a child protection law in 1989. According to information I received from the Austrian Embassy in Stockholm, when I was preparing a paper a few years ago, the law does not explicitly forbid parents to smack their children. Rather, the law makes failure to seek hospital assistance for a sick child a punishable offence.

### **Denmark**

Denmark passed its anti-smacking law in 1997 as part of a deal struck between the government and the radical opposition. According to information I have received from members of the Danish public - and judging from my own observations - the law is a paper



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product. True, it was invoked in a recent case where a small boy was ill-treated to death by his step-father. However, with or without that law, the stepfather would have been charged with manslaughter or murder.

With regard to Cyprus, Croatia, Latvia and Germany, which according to EPOCH's claims, passed anti-smacking laws in 1994, 1998, 1999 and 2000 respectively, information is hard to come by. As to EPOCH's claims that in 1996 Italy's Supreme Court in Rome declared all corporal punishment to be unlawful, it should be noted that Italy, like France, Sweden and the majority of European countries, does not have a common law system. Rather, all laws are codified and emanate from Parliament. The same goes for EPOCH's claim that "in January 2000 a judgment of Israel's Supreme Court effectively banned all corporal punishment". The Swedish government boasts about the success of the law. Yet we keep reading headlines like the following: "Child abuse is increasing. Many beaten children call the BRIS (Children's rights in society) helpline" (Gothenburg Post, 26 March, 1999), "Alarming increase of deadly child abuse" (The Swedish Daily, 26 October, 1996); "Increased violence against children in Sweden - Twenty years after the law against smacking many children are still being ill-treated" (Gothenburg Post, 25 April 1999).

The results of the Swedish smacking ban have made themselves felt in all kinds of ways. Swedish youths are well-known in continental Europe for their unruly behaviour. In the 1980's and 1990's, the Swedish embassies and consulates of the ski-resort countries of Europe sent letters pleading with the Swedish Foreign Office to urge High School principals to stop their pupils from going skiing during their February sports week.

Newspapers continue to carry articles reporting on declining standards among young people. The following headline which appeared in Aftonbladet, the social democratic tabloid, is not untypical: "Many teenage girls in fights. The police: 'They are just as bad as the boys'" (17 May, 2000). However, the media dare not demand a return to discipline and traditional values.

There are 177 countries in the world. Only four of them have confirmed anti-smacking laws - Sweden, Finland, Norway and Denmark. Their populations are relatively small. The population of Sweden (8 million) is smaller than that of London (10 million). Only a tiny fraction of the world's population has forbidden parental physical discipline of children. The Swedish anti-smacking lobbyists have tried to market their law all over the world, but the results are obviously quite meager. Common sense has so far prevailed.

\* See Lynette Burrows: How to Control Adults by means of Children's Rights — at: <http://www.nkmr.org/english/archives>.

\*\* The father had smacked his son because the boy had insisted on carrying his two-year-old brother on his bicycle along a busy road, resulting in injury to the toddler's foot which became caught in the spokes of the bicycle wheel. The Court of Appeal found that the father had every reason to be angry at his son for disobeying his father's orders and causing bodily harm to his younger brother, yet it quoted a long passage from the preparatory works of the 1979 law to the effect that there is a blanket prohibition against smacking children no matter what they might have done.