

## **A STUDY IN THE LIGHT OF ISLAMIC AND UN CONVENTIONS (CRC) ON CORPORAL PUNISHMENT IN EDUCATIONAL INSTITUTIONS**

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### **Abstract**

The study aims to investigate the extent of corporal punishment of children in educational institutions across the country. The researchers have selected Quranic verses, hadiths [sayings of the Holy Prophet], Islamic Law [Islamic jurisprudence], and Western Law to clarify the correct and balanced path of a child's education. The National Assembly of Pakistan passed a bill to ban corporal punishment for children which emerged amid several cases of corporal punishment to children in various educational institutions and workplaces. The bill prohibits all forms of corporal punishment in formal and informal workplaces and in various educational settings; religious, public and private institutions. Corporal punishment is a patch of legislation in various states of Pakistan, and the current bill only applies to Islamabad, but it is believed that the rest of the country will eventually follow the suit. The research study concluded that Shari'a (Islamic

legislation) and the Western Experts of law allows the imposition of mild corporal punishment as a last resort to educate a student in case all other means of upbringing such as kindness, discussion, encouragement, advice, guidance, and warning have already been adopted and having no effect,

## 1. Introduction

Corporal punishment has long been a common part of tradition and culture in societies around the world. The misconception that this is an effective form of discipline for children and many people do not consider it an act of violence. This attitude is not only in the hands of individuals but is also supported at the state level. In some religious traditions, it is punishable by various interpretations of sacred texts and religious teachings. Some societies maintain the use of corporal punishment through traditional justice systems and religious law, such as Sharia or Islamic law. Although many states have enacted child protection laws, they continue to use corporal punishment. But child protection policies can never be fully effective unless corporal punishment is clearly prohibited.

But corporal punishment is widespread, and many who have expressed outrage at the revelations of "severe" child abuse have failed to make clear that so-called "normal corporal discipline" violates the child's physical and emotional integrity. The notion that a certain degree of violence against children is acceptable perpetuates a culture of disrespect for children and undermines parental education in the protection of children and positive non-violence.

From ancient times to the present, every civilized society is aware of the importance of knowledge. Due to its compatibility with human nature Islam has also encouraged the acquisition of knowledge as the first revealed word is "Read" (Chapter the clot: v.1) and even educating the Muslims at that time was set for the release of the prisoners of Badr. Of those who were poor, six were given free of charge, but those who knew how to read and write were ordered to leave ten children to read and write. So, Zayd ibn Thabit (may Allaah be pleased with him) learned to read and write the same way Ibn Sa'd mentioned in the Al-Tabaqat:

“Amir says that for the release of the prisoners of the Battle of Badr, forty ounces of gold was fixed for those who did not have a ransom. They taught ten Muslim children to read and write” (Al-Tabaqat vol 2: 22)

The concept of violence and beatings for education in educational institutions has a strong attachment. It has become ingrained in people's minds that children cannot get education without beatings. This is a misconception which is making children hate education and run out from educational institutions. The Qur'anic teachings regarding teaching direct the teachers to show kindness and compassion and avoid harshness.

## 2. Problem statement and background

The strength and encouragement of religious leaders and faith-based communities is an important step in ending this common violence against children. As a growing number of religious leaders pledge support for reform, they can be encouraged to take action and use their power and strength to work in solidarity with others. Talk to you soon and keep up the good content. Hitting children and causing them pain is incompatible with the values expressed in most teachings of the world religions.

These teachings are very similar to the human rights principles of respect for human dignity, equality, justice, compassion and nonviolence. Religious values helped inform the Universal Declaration of Human Rights and generations of religious leaders and scholars have

played a significant role in defending human rights. Legalized violence against children perpetuates children's powerlessness and low status, leaving the way open to all other forms of violence and exploitation against children. Yet in the majority of states across the world, children can lawfully be hit and hurt by parents, caregivers and teachers in the guise of "discipline". This is because legislation and/or common/case law confirms the right of adults to inflict so-called "reasonable" chastisement, punishment or correction. Too often, laws also specifically authorize the use of corporal punishment in schools, and in a minority of states the law provides for children who are convicted of an offence to be sentenced to caning or flogging – or to be detained in institutions where corporal punishment is lawfully used as a "disciplinary" method. Although corporal punishment is found in societies around the world, it is difficult to gather accurate data on its prevalence because so much violence against children takes place behind closed doors - and especially children and very young children. It is difficult to get information about the corporal punishment. The only way to get the closest accurate picture of real experiences of juvenile corporal punishment is to research interviews with children, with appropriate ethical considerations. Information about violence against children and young children can only be obtained through interviews with parents in a situation of trust and confidence. Lack of visibility is one of the reasons why eradicating this common form of violence against children has long been a low priority. But what is the nature of corporal punishment in Islamic Western law? Especially in educational institutions.- . Legislation alone is not enough to effectively address corporal punishment in Pakistan's schools. One of the main reasons why teachers use corporal punishment is that they are unaware of its harmful effects and are not aware of alternative ways of maintaining discipline and working with students. Teachers who have been given corporal punishment find it useful based on their experiences and are more likely to apply it to the next generation. Legal reforms are needed, as well as measures to change the perception of corporal punishment and to equip teachers with alternative methods. This article reviews without exaggeration:

### **3. Methodology**

In this study, the research method used is the description method. This is a method of reading carefully, understanding each piece of content in a holistic reading technique, listening to each reading and then recording it in the data corpus. It is in this opinion that these methods and techniques use the method of understanding each of the entire material and recording and reading the issues related to this research. this method is called a method of narration because the results of his research later come in the form of a description of a state, an event, and interpret it accordingly.

### **4. The meaning of corporal punishment & Islamic concept**

#### **4.1 Meaning:**

The word ta'zeer is used in Islamic law for such a punishment. It is defined in the following words: The substance of ta'zeer is excuse, which literally means to forbid, to restrain, to rebuke, and to punish someone as a warning and discipline. Therefore, it is said that it prevents a person from repeating this act (crime and Sin). (Lisan al-'Arab, 4:562) **Definition of UNCRC:** The United Nations Committee on the Rights of the Child (UNCRC) has defined corporal punishment: "Any Punishment in which physical force is used and intended to cause some degree of pain or discomfort however light". (UNCRC General Comment, sn.8on)

Besides the word *ta`dīb* with the meaning of education, also known other terms in the region that is meaningful called *takzir*. (Whaba Zuhilie V,vii, p 343) explains that originally *takzir*, according to language, means to prevent (*al-man'u*). Other definition is the help (*an-nashrah*), then the definition of *takzir* is widely known as the meaning of education (*at-ta`dīb*). Definition of *takzir*, according to the term, is a punishment prescribed/action on the act of sin or *jinayah* which is not in the punishment of *hadd* and *kaffarah*. Based on the understanding it is known that the *tazir* finger is all the actions of sin/sin that is not punishable by the punishment of *hadd* and *kaffarah*. Therefore among the punishment forms in the *jarimah tazir* is imprisonment, whips that do not exceed the *hadd* penalty, warnings either written or unwritten and so forth. The permitting of imprisonment in this *jarimah tazir* according to Ulama Hanafiyah is based on the Chapter of *Al-Maidah* (5): 33 on the pronunciation of *aw yunfau min al-ardh*. (SEWORD FRESSH p 4)

#### 4.2 Islamic concept of punishment in educational institutions

There are two terms commonly used by scholars at least in expressing a beating with the educational aim of *at-ta`dīb* and *at-ta`zīr*. *Ta`dīb* as part of the way of educating based on the hadith of the Prophet Muhammad SAW *addibū aulādakum* and followed by *dharaba* (beating) pronunciation as skill to beat. Therefore, the right or territory for *ta`dīb* by striking only in certain people is mandated by the Islamic law in the Qur'an and Sunnah namely the father to the children, the husband to the wife where the *dharaba* pronunciation is also found in the Chapter of *An-Nisa`* verse 34, and a teacher to his students on the basis of ulama's thought/*ijtihād*. Although these three parties are given the right to educate by beating but the right is limited by other provisions that prevent educators from exceeding their authority. (Usool Fiqh p 32)

There are many the cases of beatings found out both husbands to wife, father / mother to child and teacher to students who ended up in the police. In this case, Islamic law affirms the obligation to the right-holders to be responsible for exceeding the educational authority which resulted in injuring and even killing the people he educated. They are required to account for their deeds and to replace the physical and psychological damage of the people they educate because they are basically educated by beating them permissible on condition of safety and goodness and not to injure or to destroy. (SEWORD FRESSH p 4) A father in particular, he has rights to his children and punishes him by beating if necessary in order to educate and teach him noble character and to prevent him from doing bad things later on.

The purpose of sending children to educational institutions is education and training for which an appropriate method should be adopted. Both persuasion and Intimidation are necessary for reform. However, if persuasion can work, then what is the need for Intimidation and beating? It is narrated that Abu Hurayrah (may Allah be pleased with him) narrated that the Messenger of Allaah (peace be upon him) said: "Do not teach harshly, because the one who teaches is better than the one who is harsh." (Musnad Abi Dawud 'al-Tayalisi 4: 229)

From this hadith it is clear that the fact is that the importance and passion for learning should be instilled in the heart of the student so that he may be attracted towards the acquisition of knowledge. When the Motivation does not work, the Intimidation s should be used.

In addition, the majority of other scholars are also based on the hadith of the Prophet Muhammad. Bahz ibn Hakim narrated that the Holy Prophet (sws) had indeed arrested a man. An individual offense, then the Prophet freed him. This hadith is made into theorem by the scholars to do the punishment of imprisonment for the offender besides *hadd* and *kaffarat*. For example, it is permissible to arrest a debtor who is reluctant to repay his debt. This punishment is determined by the judge according to the standard of the perpetrators' immorality. If the standard

of his immorality can cause great harm to the public interest, the judge can sentence the culprit to death. Therefore, in the case of fine punishment, the punishment starts from the lowest form like warning the highest punishment like death. From this detail we can conclude that the coverage of the punishment is much wider than the coverage of the fine. Therefore, it is very likely that the fine will be based on various state regulations to maintain the general welfare.

Based on the explanation above, it is understood that basically ta`dib is the kind of educational punishment that a father or mother to the children, a husband to his wife and a teacher to his/her students when the people in their education do something that causes the third party exercises its right to beat. The takzir is a type of punishment that the government has the right to be entrusted to the people under its leadership when they commit a crime. In this case, the punishment is aimed at one of them in order to educate them. If a person committing a criminal offense meets the adult age requirement, the government has no difficulty in punishing him in accordance with the applicable rules. It's just that when criminals are committed by children who have not reached adulthood (18 years), and then the government faces a severe dilemma because children, especially in the age range 15-18 years old, have been able to commit the same criminal act, even more than the ability of adults. On the other hand, the hadith of the Prophet SAW allows parents to beat them when they are reluctant to pray at the age of 10. Therefore, there is the possibility of the government giving a corporal punishment to those who are more than 10 years old when they commit a criminal or jarimah.

Jarimah is called a criminal act in Islamic law. The scholars have interpreted the Jarimah as a prohibition on Shariah threatened by Allah (SWT) with the punishment of hadd and tazir. Hadd and tazir punishments for the criminal acts above are provided by Allah (SWT) for those who can be held accountable for their actions. Usually, these penalties are given to the persons who are eligible for punishment. Common requirements include baligh and rational (adult). In the case of adult conditions, the children as immature persons are exempt from the provision to obtain the principal punishment when they commit the hudud criminal offense as mentioned above. Nevertheless, a child who commits a hudd criminal act can not be spared from legal liability because they can still be held accountable from the point of tazir or ta`dib.

Generally, education experts say that a child cannot be called a criminal because the actions taken by the child are not criminal similarly the views of Islamic scholars. The term that is widely given to children who break the law is called juvenile delinquency. It's just that involvement of children/adolescents in criminal activities is inevitable as field facts show a growing trend of criminal offenses in children and adolescents. In general, intellectuals in education do not approve of violence (beating) as an educational reason.

### **4.3. United Nation convention (CRC)**

The United Nations Convention on the Rights of the Child (CRC) is the most ratified treaty in the history of international law. The CRC explicitly requires states to protect children from all forms of physical or mental violence (article 19) and from torture or other cruel, inhuman, or degrading treatment or punishment (article 37) Under Article 39, states must provide assistance to children who are victims of violence. The CRC requires that school discipline be "in accordance with the child's human dignity and current conventions" (Article 28.2) - without the use of corporal punishment.

States that have ratified the CRC are responsible for explicitly banning all corporal punishment of children, including at home, and ensuring proper enforcement where legislation is in place. Article 42 of the CRC obliges 42 states to "make the Convention equally accessible to

adults and children through appropriate and functional means." But many children are unaware of their rights and may grow up believing that they deserve corporal punishment or that it is their own fault. Article 14 of the CRC recognizes the right of a child to religious freedom. It respects the rights and duties of parents or legal guardians to direct the child to exercise his or her rights "in a manner consistent with the child's growing abilities." But adults cannot rely on religious belief to inflict corporal punishment on children.

The UN Committee on the Rights of the Child monitors implementation of the CRC and is the highest international authority for its interpretation. Elected by states parties to the Convention, the 18-member body meets three times a year in Geneva. States which have ratified the CRC must submit regular reports on its implementation. The Committee has consistently stated that the legal and social acceptance of corporal punishment of children in the home, institutions and all other settings is not in accordance with the Convention. The Convention on the Rights of the Child is available at National high level courts have come to similar conclusions. In 2000, an association of 196 Christian schools in South Africa appealed to the South African High Court and then the Constitutional Court, to declare the law prohibiting corporal punishment in schools invalid in relation to independent schools, where parents had consented to the use of corporal punishment and on the grounds that the law interfered with the right to freedom of religion (*Christian Education in South Africa v (The Minister of Education 2000 (10) BCLR 1051 (CC)*).

### **UN study on violence against children**

In 2001 the UN General Assembly, acting on the recommendation of the Committee of the Rights of the Child, called for a Study on Violence against Children. In 2003 the UN Secretary General appointed the Independent Expert Paulo Sérgio Pinheiro to lead the first global Study, to present a detailed view of the nature, extent and causes of violence against children. Many thousands of people contributed to the Study and many participated in working groups. There were nine regional consultations involving governments and civil society. Children were actively involved throughout, providing their views on violence and its impact on their lives and developing plans for international action. An important message of the study is that "no violence against children is permissible. All forms of violence against children can be prevented..

The Study looked in detail at the following settings where violence against children occurs:

- in the home and family
- in schools and educational settings
- in care and justice systems
- in work settings
- in the community

### **4.4. Principles of Islamic Law on Corporal Punishment**

The rule of Islamic law is to teach but not to be harsh, because the one who teaches is better than the one who is harsh. This shows that the fact is that the importance and passion for learning should be inculcated in the heart of the student so that he may be attracted towards the acquisition of knowledge. When the Motivation does not work, the Intimidation should be used. Your (peace be upon him) actions show that it is permissible to be angry and scolded to stop your student from doing something, because sometimes it is necessary to warn children. Ibn al-'Arabi has stated five principles in this regard:

- Informing your subordinates
- Paying more attention to the little ones
- Gradual correction and discipline
- Subordinates should be given the opportunity to clean up
- Warn of absenteeism.(Ahkam Ul Qur'an 3:479)

### **The opinion of the four Jurists in this regard:**

All the jurists agree that it is obligatory to discipline and correct children, because it contains the secret of their future well-being. However, there is a difference of opinion as to whether corporal punishment is necessary for discipline or not. According to Maliki, Shawfa'i, Hanbalis and Hanafis, corporal punishment is necessary for discipline, while Imam Abu Hanifa divides corporal punishment into two parts: If it is for education, then it is obligatory. ( Raddul Mukhtar, 6:566)

These jurists have given their own arguments. The summary of all of them is that corporal punishment is a means of discipline and education. There is no reason to deny it. However, it is necessary to observe their limits. Yes, now that there is room for corporal punishment, it is important to first understand its meaning.

After knowing the introduction and the reality of corporal punishment, it should be borne in mind that the scope of corporal punishment is very limited in the Shari'ah, because it is the last resort of correction. But this beating is not absolute, but there are some rules and regulations for it, the observance of which is necessary for a coach and teacher. The most basic thing is that a student under the age of ten should not be punished.

Principles of corporal punishment: However, there are some principles in Islamic law for corporal punishment:

- Punishment should not be given in such a way that a deep mark is left on the body. If the teacher punishes the child severely, then the teacher should be punished. It is not permissible for a student to be severely punished for teaching. ( Raddul Mukhtar, 6:566)
- The punishment should not be more than the patience of the child. The Prophet (peace and blessings of Allah be upon him) said to a teacher: "The punishment should not be more than one blow. If you punish more than three times, Will take place.
- Do not hit on the face because it is a major part of the body and consists of the components of Itaifa and sharifah. (Sunan Abi Dawood Hadith No. 4493) Explaining this, Allama al-Shami says: If a person is hit on the face or on a particular part of the body, he is obliged to guarantee it against someone else, even if he does not have a stick, because it is a loss.(Raddul Almukhtar 6: 566)
- Don't beat an innocent child. If a teacher beats a child without guilt, then the same teacher deserves to be punished. Ibn 'Abidin says that if a Teacher beats a child without guilt, then the teacher will be punished on the complaint of the child. (Shami, 4:79)

The principle for reforming and educating children is to use 'gentleness' and 'morality and compassion. However, they are allowed to be beaten within the limits of Shari'ah when necessary, but these corrective measures do not reach the level of violence. "Punishment should be for the betterment and good of the child, not for venting one's anger on the child,"

## **5 Comparative Study Result**

If we study from a religious point of view, it becomes clear that religion has been a major force in people's lives for centuries and plays an important role in today's daily lives. Despite

differences in beliefs, ideologies, practices, and deities, the world's major religions respect all human beings and teach empathy, equality, justice, and non-violence. Religious leaders are in a unique position to mobilize faith-based communities into action towards ending all corporal punishment of children, building on a long tradition of social action. Long before the emergence of NGOs many religious communities were in the forefront of social justice and education.

Some religious leaders continue to teach their communities that corporal punishment of children is necessary and even a parental duty. However, growing numbers are challenging this and publicly acknowledging that corporal punishment is at odds with and debases their religious principles and core beliefs. Many religious leaders and communities are involved in the movement to abolish and eliminate corporal punishment and consider it necessary to end this injustice to children, both morally and religiously (Section 2.2e).

Religious teachings about non-violence can be influential in countering religious justification for corporal punishment. The UN Convention seeks to enforce the laws of corporal punishment much later, when the principle has existed in Islam for a long time, as the debate concludes, It is permissible to kill them within the limits of shari'ah if necessary, but the difference between punishment and violence should be kept in mind. Punishment is the intention and purpose of correcting and benefiting the child. When the child is vented in violence. Therefore, the punishment should be kept in mind that the punishment should not reach the level of violence.

But in terms of application, it is important to note that corporal punishment has become a tradition in educational institutions, especially in Pakistan. It remains the standard educational practice in many nations to corporally punish children as a means of discipline, even though many countries have officially banned corporal punishment of children by implementing the UN Convention on the Rights of the Child (United Nations, International Children's Emergency Fund, 1989; 1998b; 1998c) However, there is a principle of corporal punishment of children in Islamic law. As stated earlier.

Research in modern educational psychology proves that students can be punished for moral crimes, in addition to corporal punishment has a detrimental effect on students' educational process, so the teacher should avoid corporal punishment as much as possible. Punishment hurts a student's self-esteem. Creates hatred against the teacher and sometimes the student ends the education. Therefore, the teacher should be fully acquainted with the psychology of children. Imam al-Ghazali says: During teaching, the teacher should carry out his teaching duties according to the psychology of the student. Unnecessary beatings and reprimands in the field of education are harmful, especially in the case of young children, as it is a sign of incompetence and wrong training of the teacher.

Those who develop through reprimand and anger and violence, whether they are schoolchildren or slaves or servants, their hearts and minds are overshadowed by the wrath of the teacher. The nature of the helpless is extinguished, the aspirations and morale are low, the passion and interest is gone and there is fun in nature, but sometimes the mind is suspended. Violence breeds lies and malice and deprives oneself of self-control, as if coercion teaches children to cheat and deceive.

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