

Corporal Punishment of Minors in the Muslim Family in Israel

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Abstract: Corporal punishment was always considered a valid disciplinary measure in Muslim Arab culture to be used as deemed necessary to shape a minor's behavior. Applying physical force against children as punishment for unwanted behavior has become a normative part of parents' routine interaction with their children, despite the fact that it is forbidden by Israeli law. Psychologists that work with the Muslim Arab population find it difficult to convince parent of the difficulties and conflicts that they create by enforcing corporal punishment on their children. Parents tend to reject professional advice because it is viewed as conflicting with their cultural mentality and traditions and ignore the vast research that proves the ineffectiveness of this type of discipline and the complications that it may lead to. What's more, Sharia law, the religious Muslim legal code that governs the lives of Muslim Arabs in Israel, advocates and even encourages corporal punishment. Legislation and further professional intervention is necessary to change this harmful practice and to protect Muslim Arab children.

Key words: Sharia Law, corporal punishment, discipline, violence children, Muslim, Israeli legislation.

1. Background

Sharia is the Islamic religious legal system responsible for ruling on matters of family law for Muslim litigants; performing functions similar to those that rabbinical courts provide to Israel's Jewish population. The Sharia court system is divided into two levels. There are currently eight lower level Sharia District Courts in Israel, each presided over by a single qadi (judge), and a Court of Appeals, a high level court which is presided over by three qadis and is authorized to decide appeals regarding all rulings of the Sharia District Courts. The verdict is then reached by a majority vote.

The sharia judicial system originated from Ottoman

Muslim family law and when first instated, applied to all citizens of the Ottoman Empire regardless of their religion. Later, when the British Mandate was established in the Land of Israel, the court's jurisdiction was restricted to Muslim citizens only. Before the establishment of the State of Israel, all judicial affairs of the local Muslim population were managed by the qadis of the Supreme Muslim Council. With the establishment of the State these courts ceased to operate, but were later reenacted and new qadis appointed to preside over them [1].

According to the British Mandate judicial code, the Muslim courts were authorized to rule on various legal family issues such as marriage, divorce, alimony/child support, custody, inheritance, wills, and personal status such as missing persons, disqualified persons, and expropriation, and confirmation of reaching maturity. After the establishment of the State of Israel, the

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authority of these courts was restricted further to include only Muslim family laws related to marriage, divorce, custody and occasionally, inheritance [2, 3].

2. Introduction

Approximately one fifth of Israel's population is comprised of Arab Israeli citizens [4]. The majority of this population is of Muslim faith while the minority is Christian. This society has distinct social and cultural characteristics, though since the establishment of the state of Israel, they have received Israeli citizenship and are bound by Israeli civil law.

Over the years, portions of the Arab Israeli society have gradually begun to shift away from their traditional culture and identity and adapt modernized codes and standards [5]. The most significant of these changes are manifested in inner-familial, educational, economic and social values and practices [6]. This paper will focus on an educational aspect that has developed over the years, namely physical educational punishment at schools, which is prohibited by Israeli law. Despite the gradual transition to more modern lifestyles, portions of the Israeli Arab population continue to believe in their right to discipline their children with a light slap imposed for educational purposes, which can evolve into harsher forms of violence as a result of their desire to educate. This mindset has changed to some extent as the population became subordinated to Israeli law and more closely associated with general Israeli society. Though only a small percentage have chosen to end the tradition of imposing corporal punishment on their children, it is clear that this small percentile does indeed exist.

Arab culture in general and the Arab Israeli society in particular, is collectivist-oriented as opposed to individualist-oriented in its family and social structure and values [7]. Relationships with the nuclear and extended family are of immense significance in Arab culture and are given highest priority over any other forms of extra-familial social relationships [8]. Likewise the interdependence within the nuclear

family and between members of the extended family is very prominent. Studies have shown that this interdependence is expressed primarily in financial support, child care and social support [9]. Corporal punishment was always considered a valid disciplinary measure in the traditional family structure and has been used as deemed necessary to shape the minor's behavior and emerging personality.

This phenomenon is often presented at the Educational Psychological Service in several locations in Israel, as it still prevails in large portions of Arab society. Many parents require education on the emotional damage that this "educational" punishment can inflict upon a child. From the parents' perspective, hitting their children as punishment for unwanted behavior has become a normative part of their routine interaction with their children. In other words, some parents seem to be almost addicted to this distorted method of disciplining and educating their children and are incapable of abandoning this practice. Legitimizing a parent-child disciplinary relationship based on corporal punishment with the intent of guiding the child in the right direction is clearly a flaw in the collective mentality of the Muslim Arab society in Israel. This becomes especially apparent when a psychology professional approaches families and attempts to explain the absurdity of the form of punishment that they impose. Many parents are incapable of accepting the idea of alternative discipline methods. They often reject professional advice because of its incompatibility with the cultural mentality of their families and the society in which they live.

Over the past decade, as the Muslim Arab population in Israel becomes increasingly modernized, the younger generation has begun to object to the corporal punishment imposed by their parents. Their exposure to the liberal, modern world creates inner conflict within these children. The new world that they discover beyond the boundaries of their traditional homes encourages more pacifist and accepting values that

conflict with the behavioral standards that they encounter in their home. By imposing corporal punishment as a disciplinary measure, parents trigger a natural reaction in the child which causes their children to distance themselves from the pain-inflicting parent. This confounded reality indirectly enhances the incoherence in the child's inner world. Children need an adult, a parent in this case, to guide and mentor them, but when faced with a complex, threatening and stressful situation that they must deal with alone, the child may exercise infantile creativity while dealing with the conflicts that arise. These unguided, undeveloped reactions can cause emotional confusion during the early and critical stages of development. Therefore, corporal punishment inflicts more emotional than physical pain on the child. This is precisely the root of the problem. This disciplinary approach can create innumerable inner conflicts within the child, which his surroundings will be completely unaware of.

3. Corporal Punishment in Israeli Society

Use of physical force for educational and disciplinary purposes was once considered accepted behavior by most. Corporal punishment of a child which involves spanking or a slap on the cheek was a controlled and common parental response to inappropriate behavior and was not considered an act of violence or abuse against the minor, but rather an effective disciplinary measure. Many parents believe that this form of punishment produces immediate educational results, often citing the biblical verse "He who spares the rod hates his son" [10] as proof. In addition various cultures and ethnic groups accept the educational ideology that considers corporal punishment to be an effective and legitimate disciplinary measure.

Judge Beinisch [11] explicitly formulated the child's right to protection against corporal punishment inflicted on a minor by a parent. She describes corporal punishment as a form of "humiliation and derogation

from their dignity as a method of education by their parents, is entirely impermissible, and is a remnant of a societal-educational outlook that has lost its validity" [11]. This ruling was highly controversial and triggered much public debate in which the opposing sides voiced multiple and conflicting arguments regarding the demographic, pluralistic and religious structure of Israeli society.

From the perspective of the Muslim family which is heavily influenced by its traditional culture and Sharia law, transitioning away from corporal punishment is a complex issue that provokes dilemmas related to effective discipline without resorting to the physical force that their own parents employed in the past, when they themselves were growing up.

The question to be considered is whether a parent that routinely spansks or slaps a child is guilty of a criminal offense. Before discussing the legal aspects of corporal punishment, this paper will first present the psychological perspective.

4. Psychological Impacts

Parents who view corporal punishment as a valid disciplinary measure tend to distinguish between a reasonable and controlled disciplinary slap and a violent beating that serves as a release for the parent's anger. Rudolf Dreikurs, who developed psychologist Alfred Adler's system for stimulating cooperative behavior, disagrees, as he claims in his book *Children: The Challenge* [12]. He writes that when adults respond to their children's provocations with punishments or physical force, they must be honest enough to admit to themselves that their reaction offers relief from built-up anger and fury at the child. We must not delude ourselves by arguing that the punishment serves the child's best interests.

Child psychologist Bruno Bettelheim [13] wrote that a parent who loses control as a result of the harsh emotions that the child's negative behavior invokes, will find it difficult to justify corporal punishment and be more hesitant to use such forms of discipline if that

parent is able to admit to himself that his actions are driven by emotions, instead of attempting to portray these actions as being valid disciplinary measures.

In other words, when parents lose their temper as a result of a child's behavior, corporal punishment becomes a forceful expression of outrage that is disproportional to the child's misdemeanor and ignores the emotional impacts that such so-called disciplinary measures have on the child. Studies have shown that corporal punishment is not only an ineffective disciplinary measure but also has negative psychological impacts on the child's behavior. In many cases, parents of children with diagnosed or suspected attention deficiency disorders are unable or unequipped to meet their children's unique needs. Either the family does not understand the need to develop new harmony and synchronization with the child or is incapable of doing so [14].

In addition, corporal punishment is not an effective motivator. Instead, it invokes anxiety in the child and leads to attempts to avoid punishment instead of internalizing desired codes of conduct. Physical punishment teaches the child that the parent is unhappy with his behavior, but does not instruct the child on what the desired behavior is. The anxiety that develops as a result of corporal punishment creates a negative learning experience as the child seeks ways of avoiding punishment instead of learning the desired behavior that would eliminate the need for punishment.

Regarding the psychological impacts of corporal punishment, many experts have found that children who are disciplined using physical force often develop violent tendencies. Bandura [15] explains that behavior is acquired by imitating a personal role model. He claims that parents who exhibit violent patterns of behavior are often imitating the violent conduct used against them as children by their own parents. Advocates of the frustration theory [16] claim that corporal punishment frustrates the child; and this frustration may lead to violent conduct. The situational perspective of this issue states that violence leads to

more violence, meaning that a child that is exposed to corporal punishment will respond by imitating acts of violence, usually directed at peers in school or younger siblings. The Adlerian approach [17] argues that a child may perceive corporal punishment as a form of attention, thus encouraging these children to develop negative conduct in order to win their parents' attention in the form of physical punishment.

Repeated physical punishment or threats of pending punishments are painful and humiliating to the children that endure them and may trigger psychopathological symptoms such as psychosomatic or anxiety disorders and depression.

To summarize the psychological effects of corporal punishment, this form of discipline has been shown to be not only ineffective but also harmful to the child, who may develop behavioral disorders as a result of this treatment. Though corporal punishment does not cause psychopathology, it can trigger and enhance mental and emotional disorders in the child's personality.

5. Corporal Punishment in Israeli Legislation

The first court ruling related to corporal punishment was published in 1953 by the late Honorary Justice Heshin, then acting President of the Supreme Court of Israel [18]. The case was an appeal filed by a nun who had been convicted of imposing extreme and unreasonable corporal punishment on an orphan child in her care. Heshin based his verdict on British law, stating that a father and an educator are permitted to punish minors under their authority, even using corporal punishment, in order to teach them proper behavior and discipline. Heshin continued by stating that as parents and educators have the right to impose corporal punishment on minors under their authority, the only question is the severity of the punishment and its compatibility with the severity of the child's offense.

This ruling from 1953 became the basis for claims made by parents and educators accused of abusing

minors in their care. It was also used as a precedent for Judge Straschnov's ruling in the Asulin case [19]. The defendant, Avigdor Asulin was charged for assaulting and abusing his minor child. In his ruling, Judge Straschnov noted that corporal punishment imposed by a parent on a child in order to discipline and restrain the child and teach obedience, is not educationally unacceptable and is not forbidden by law, provided that the punishment is proportional and used while the parent is composed and capable of exercising proper judgment.

Several court rulings published in the 1990s challenged Justice Heshin's ruling from 1953 regarding corporal punishment for educational purposes. In 1994, teacher Abd El-Gani was accused of physically abusing his student [20]. Deputy President of the Israel Supreme Court at the time, Justice Aharon Barak, ruled that physical violence against a student is a violation of human dignity and is therefore forbidden by law. In a second incident that same year, Judge Dorner ruled in favor of the state's appeal and convicted a preschool teacher for inflicting verbal and physical violence against the children in her care, including shaking and slaps to their hands, shoulders and backsides.

Regarding the issue of domestic corporal punishment, in a Tel Aviv District Court ruling in 1996 [21], Judge Saviona Rotlevi wrote that as it is the court's responsibility to define judicial and moral norms, it must condemn all forms of parental violence against their children, even those justified by various philosophies of education and discipline. Justice Beinisch used this ruling as a precedent in a Jane Doe appeal 4596/98 [11], which she ruled on. The anonymous woman was accused of beating her children over an extended period of time with various objects and causing them injury. In her ruling, Beinisch did not hesitate to state clearly that parental use of corporal punishment against their children is prohibited in the author's society.

Today's Israeli law prohibits use of corporal

punishment against minors, as shown in various legal sources. First, parents are not covered by the provision laws that appear in section 34 of the Israel Penal Law 5737-1977. Other basic judicial principles support this prohibition as well.

5.1 Israel Basic Law: Human Dignity and Liberty

In 1992, the institution of the Israeli basic law regarding human dignity and liberty, granted higher legal stature to the rights defined by that law. These rights apply to all humans, minors and adults alike. Sections 2 and 4 of the Basic Law of Human Dignity and Liberty prohibit violation of a person's body or dignity. Limiting section 8 of the Basic Law of Human Dignity and Liberty states that "There shall be no violation of rights under this Basic Law except by a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required". This means that the rights listed in the basic law may be violated by legislation under certain conditions, though the fact that protection of a person's body is granted legal stature by this basic law significantly reduces the extent of legislation that may permit imposing physical harm.

5.2 The Convention on the Rights of the Child

The Convention on the Rights of the Child was adopted by the UN General Assembly in 1989 and was adopted by Israel in July, 1990. Article 19 of the convention states that "States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence... while in the care of parent(s), legal guardian(s) or any other person who has the care of the child."

5.3 Israeli Law

The court ruling in the Rasi case [18] protected the rights of the parent or educator to impose corporal punishment, while restricting this right to use of reasonable force only. This ruling was based on British

legislation of that time. Nevertheless, the Israel Foundations of Law Act, 5740-1980 repeals Article 46 of the Palestine Order in Council which defined the sources of the law that would apply in Palestine under the British Mandate. Instead, the Act refers the judge to principles of liberty, justice, integrity and peace defined by Israel's heritage. The interpretation of this referral has been the cause of much discussion and debate.

When considering parental corporal punishment in light of Israeli tradition, the first thing that comes to mind is the biblical verse "He who spares the rod hates his son" [10]. In 1997, former Minister of Education, Rabbi Yitzhak Levi wrote [22] that despite the common interpretation of this verse, the bible does not in fact require use of corporal punishment as an acceptable disciplinary measure. He quotes the second half of the verse, "but he that loves him is careful to discipline him", which means that a loving parent educates a child by teaching values and morals, not by imposing physical force.

Rabbi Levi continues by presenting additional examples of biblical and rabbinical sources that use the word "rod" to mean discipline and authority instead of its literal meaning. He cites various sources in Jewish literature to prove his argument and brings examples of Judaism's objection to imposing physical force in order to discipline a child. He concludes his article by saying that traditional Judaism clearly does not advocate use of corporal punishment as a disciplinary measure, even going so far as to say that in our times, educating a child with physical force is forbidden by Jewish law, as the concept of violence is contradictory to education.

6. Corporal Punishment in Sharia law

Islamic law permits imposing light physical punishment as a means of educating a child. It states that in certain cases, a light slap or similar degree of physical force is acceptable for educational purposes [23]. This form of corporal punishment is permitted by Sharia law in the school setting as well. The law

emphasizes that the only justification for imposing physical punishment is for the purpose of shaping positive and desirable behavior in the child, as well as to enforce the child's adherence to religious Islamic law. The Islamic endorsement of reasonable corporal punishment as a disciplinary measure repeatedly emphasizes the importance of instilling conduct that is compatible with Islamic religious law.

It appears that Muslim Israeli citizens who apply this undesirable disciplinary method are rarely motivated by religious Islamist ideals. The frequent use of corporal punishment usually stems from lack of an elementary understanding of its impacts and unfamiliarity with alternative disciplinary methods.

7. Summary

The legislative and executive branches of the Israeli government must take action and allocate resources to protect children from violence. The Knesset must pass a declarative law that explicitly prohibits all use of violence, humiliation and degradation for educational purposes. The legislation process must be accompanied by a comprehensive public campaign via mass media channels and Israel's welfare and community services. In addition, consultation services must be made available for parents, and suited to the changing and varying needs of the multitude of cultures and sectors in the population.

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