

BRIEFING PAPER SERIES:
RIGHTS OF THE CHILD

**PHYSICAL CHASTISEMENT OF
CHILDREN AND IMPUNITY FOR FATHERS
UNDER IRANIAN LAW**



INSIGHTIRAN

Physical Chastisement of Children and Impunity for Fathers under Iranian Law

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1. Physical Chastisement at Home or School

Corporal punishment and other cruel or degrading forms of punishment can take place in many settings, including at home in the hands of parents or at school by teachers. Under the IRI's Penal Code (IPC), physical punishment and corporal chastisement is not ruled out as a method of correcting children. In fact, parents, and guardians, of children are deemed responsible for correcting children and "if necessary" they are allowed to use corporal punishment. This must however be applied "moderately" and "expediently". Article 49 of the old Penal Code provided that "[i]f, in order to correct child offenders, corporal chastisement is deemed necessary, it must be moderate and expedient". Moreover, in order to remove any doubt about the lawfulness of such acts and to give assurance to parents, article 59 of the same law provided that "[t]he following acts shall not be considered an offence: 1- The acts committed by parents and legal guardians of minors and insane people in order to chastise or protect them provided that chastisement and protection are exercised within the customary limit. ...".

It does not seem that the new IPC has made any significant change to this rule although it adds "religious" limits to acceptable chastisement. Article 158, stipulates that committing a conduct which is considered by law as an offense, shall not be punished in the following cases:

“... (d) The acts committed by parents and legal guardians of minors and insane people in order to chastise or protect them provided that such actions are exercised within the customary and religious limits for chastisement and protection.”

The problem is that “moderate” and “customary” limits are too vague. They may vary from case to case and do not comply with international standards. Religious limits are not more helpful either. Therefore, for instance, slapping a child in the face may be considered as customarily acceptable if a child is rude to his or parents, and as long as it does not make the child’s face red or blue or does not cause bleeding it is within religious limits. Hitting the child in less sensitive areas or acts such as shaking or throwing the child or other painful and degrading punishments that do not cause redness of skin or any bruise or injury, are even more likely to comply with religious limits. Therefore, it would be true to say that the law does not comply with international standards set by the CRC:

First, the law, while imposing all sorts of inhuman and degrading punishments such as flogging and amputation of limbs as a punishment for certain crimes, permits some forms of corporal punishment against children in the hands of their parents and legal guardians. In fact, not only does the law permit some forms of corporal punishment, does it describe it as “necessary” in some occasions.

Second, it fails to protect children against those forms of corporal and degrading punishments that do not cause a qualified injury under Shari’a law. By adding “religious limits” to the new Penal Code—which was implied in the old IPC anyway—the law does not move forward towards more protection for children, but falls deeper into Shari’a law that does not conform with the current needs of the society and children.

Third, the current limits on physical punishment of children by parents and legal guardians are effectively whatever they can get away with. This is because the law fails to provide any clear criteria for unlawful acts and leaves it to parents, and guardians, to use their own discretion. The law should have taken this area out of the hands of custom, religion, and individual discretions and ban all forms of physical violence against children.

School is another setting where children are subject to power and control by adults and are at risk of being exposed to violence by teachers and school authorities that may misuse their power over children. However, it must be noted that, under the IRI's law, as far as corporal punishment is concerned, teachers do not enjoy the same favourable provisions provided for parents and legal guardians. Therefore, basically they have no right to impose any corporal punishment against children. They must follow the disciplinary rules of the school and any sanction against children must be in accordance with the rules and regulation. Otherwise, the teacher or school authorities will face disciplinary and/or criminal consequences. Having said that, this does not reflect the current practice and culture in schools in Iran. Although it must be admitted that the application of corporal punishment has been decreased over the last several decades, it still exists while every now and then some extreme cases take the attention of the public and media.

For example in 2012 a series of separate incidents in the schools of a small town near Kerman were reported by newspapers where students were violently beaten and injured by their teachers. [1] Such incidents, however, are not limited to small towns and villages and similar incidents happen in big cities like Tehran.[2] The frequency and high number of these incidents across the country show the widespread and intense nature of the problem. It is also worth mentioning that not only some parents may turn a blind eye on some minor incidents, even in more serious cases they may not pursue legal proceedings against teachers and school authorities either, as they may fear that it will have negative consequences for their children. In fact, in some cases, the victims and their parents have been forced by school authorities to give their forgiveness and drop the criminal cases, and they often do so.[3] In sum, although disciplinary regulations and criminal rules are in place in order to punish the perpetrators, it is clearly not sufficient and more drastic measures are needed to overcome the problem.

2. Impunity for Fathers

According to Shi'a jurisprudence as reflected in the IPC, a father, and any male paternal ascendant (e.g. father's father), cannot be put to death for killing his child (or grandchild). This rule does not

apply to the mother and the ascendant (e.g. mother's mother). Article 220 of the old IPC stipulated that "[a] father or grandfather that murders his child shall not be sentenced to *qisas* [retribution], but only to *ta'zir* punishment and *diya* [blood money] for murder to the heir of the victim." It was seen by some commentators as an impunity for fathers and paternal grandfathers to kill their children and grandchildren without facing any serious sanction.

The new IPC has kept the same rule but put it differently. According to article 301 of the new IPC:

"Qisas shall be delivered only if the perpetrator is not the father, or a paternal grandfather, of the victim ..."

Cases in which fathers kill their own children are usually cases of honour killing or marital disputes between parents. For example, in May 2014, a father killed his 17 year old daughter in Kangavar. He told the police that he had been fed up with his daughter's behaviour for some time. According to him, his daughter had been out of town with some friends including some boys when in return they were arrested by the police and handed over to their families. [4] In another case, it was reported a father had murdered his 3 and 6 year old children following a dispute with his wife. [5]

In such cases, the *qisas* punishment (the death penalty) cannot be delivered against the father and he may only be sentenced to between three to ten years of imprisonment for disturbing the public order, at the discretion of the judge. It must be explained that the critics of this provision do not seek the death penalty for the father, but they stress that the only alternative punishment available, which is based on disturbing the public order and left at the discretion of the judge, is insufficient and sends a wrong signal to fathers that they may get away with killing their children.

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Footnotes:

[1] Source: Daily Etemad, 25 October 2012, No 2528, p. 13.

[2] For example in December 2014, a 15 year old boy was hit violently, including in his genitals, by his teacher which resulted in his hospitalization. Source: ILNA News Agency, News No. 229070, 1st December 2014.

[3] In December 2014, a sixth grade student was hit by his teacher in the head that fractured his nose. He went under surgery and requires a further surgery when he reaches 16. His father claimed that he was threatened by the Principal of the school that should he pursue his criminal complaint his son would be dismissed from the school. Source: Khordad News Agency, News No. 111087, 27 December 2014, available at <<http://khordadnews.ir/news/111087>>.

[4] Daily Etemad, 29 May 2014, available at <<http://www.magiran.com/npview.asp?ID=2959517>>.

[5] Source: Fars News Agency, 2 January 2015, <<http://www.farsnews.com/newstext.php?nn=13931012000750>>.

INSIGHTIRAN

Insight Iran is a non-governmental non-profit organisation aimed to provide insight into the situation of human rights in Iran.

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This legal analysis belongs to a series of briefing papers on human rights in Iran authored by the legal experts of Insight Iran. Each paper provides a human rights legal analysis and examines a distinct topic to measure the IRI's international obligations against domestic laws and practices. These briefing papers provide an accurate and analytical account of the violations in Iran from the standpoint of international law, which may offer UN human rights institutions, States, and civil society advocates a better understanding of, and tools to promote, the situation of human rights in Iran.

The first series of the briefings examines some critical aspects of the rights of the child with respect to the IRI's obligations under international human rights law including the Convention on the Rights of the Child (CRC) to which Iran is a State party.

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