



Convergence of corporal punishment (Especially about children) in terms of criminal law of Iran and rules of international law

^{*1} Amir Karimi, ² Mojgan Kasiri

¹ Ph.D. Student of Criminal Law and Criminology of Islamic Azad University of Tabriz, Iran

² Ph.D. Student of Criminal Law and Criminology of Islamic Azad University of Karaj, Iran

Abstract

Corporal punishment in Iran has been criticized; however, the rule of law and Islamic law has always allowed it. While, sentencing child offenders to death, to life imprisonment and to corporal punishment has been consistently denounced by UN Treaty Bodies and Special Procedures and by regional human rights mechanisms as a violation of human rights and International and regional human rights mechanisms and high level national courts have applied human rights standards in condemning and requiring prohibition of the sentencing of children to death, life imprisonment and corporal punishment. Now the question is that what is the impact of developments in international law in the field of criminal justice in corporal punishment in Iran law especially in the case of children? Is it possible that regulations and rules of Iranian criminal law converge and align with international rules regarding to corporal punishment or not.

Keywords: Iran law, punishment, children, corporal punishment

Introduction

Corporal punishment refers to intentional application of physical pain as method of behavior change. It includes a wide variety of methods such as hitting, slapping, spanking, punching, kicking, pinching, shaking, shoving, choking, use of various objects (i.e., wooden paddles, belts, sticks, pins, or others), painful body postures (such as placing in closed spaces), use of electric shock, use of excessive exercise drills, or prevention of urine or stool elimination. The majority of children have experienced physical punishment by the time they reach adolescence

A study carried out by Child line India Foundation between 2009 and 2011 found that students experienced corporal punishment in almost 95% of the 198 schools in 11 states studied, despite it being prohibited. Only 6% of government schools studied and 4% of private schools studied were free of corporal punishment (Reported in India Today, 5 January 2012) ^[1]. Some research revealed that in United States and parts of Canada remain the only developed countries to allow corporal punishment.

Corporal punishment does not produce long-lasting changes in behavior; negatively affects the social, psychological, and educational development of students; contributes to the cycle of child abuse; and promotes pre violence attitudes of youth ^[2], and then this subject always has been noticed by researchers and lawyers.

Although support for corporal punishment of children remains widespread in the world, there is a substantial body of research from psychology and its allied disciplines indicating corporal punishment is ineffective as a disciplinary practice and can have unintended negative effects on children. At the same time, there is a growing momentum among other countries to enact legal bans on all forms of corporal punishment, bolstered by the fact that the practice

has come to be regarded as a violation of international human rights law ^[3].

It is true that all the world, because of this issue has been under scrutiny, but the situation of Iran is much more complicated. It is announced that Iran was examined in the first cycle of the Universal Periodic Review in 2010 (session 7). The government rejected the recommendation to end cruel punishments, stating that “the term of ‘cruel punishment’ is applicable to none of the punishments stipulated in the laws of the country” ^[4]. Examination in the second cycle took place in 2014 (session 20). The following recommendations were made: “Amend the Islamic Penal Code and outlaw inhuman corporal punishments (Czech Republic); “Explicitly prohibit all forms of corporal punishment in children (Israel); “Revoke all laws that allow corporal punishment in children (Israel)” The government rejected the recommendations ^[5]. While Islamic Penal Code of 1392 (Iran) did not anticipate the corporal punishment of children, so it is not permitted ^[6]. However, there is a criticism which continues to this punishment in Iran and it is asserted that the corporal punishment in Iran is torture and it should be stopped.

Another issue is that while despite the lack of uniformity of the definition of torture, three elements were identified as an integral part of this evil. To be considered torture, the act must be intentional, must cause severe pain or suffering, and must have a “forbidden” purpose. Indigenous corporal punishment always fulfills the element of intent but does not always fulfill the purposive or the “severe pain or suffering” elements. Without one of these elements, the punishment simply will not amount to torture, because it does not meet the requirements ^[7]. According to the statement we must distinguish the concept of torture and corporal punishment.

Another fundamental subject is institutional analysis corporal punishment in Iran and resolving doubts about the violation

of the human dignity and human rights. According to this view, assuming reasonable corporal punishment in Iran, it has said that these penalties are not against human dignity.

In defense of the Islamic approach, it can be said about punishment that punishment of the perpetrator is out of the scope of the definition of torture in Islamic jurisprudence and with a close look at all elements and conditions with regard to crime and punishment and other legal system of Islam, we could say that corporal punishment will not be as inhumane and humiliating punishments; indeed, when the perpetrator with his conscious, committed crime, he exist himself outside the circle of human dignity and has made himself worthy of punishment^[8].

But one of the undeniable issues in this regard is flogging; although flogging has been wiped out in the list of criminal laws of most of the world, but the punishment is predicted to continue in the Iranian Penal Code. However in the new law unlike the former law under Article 91, was decided that criminal punishment and retribution is performed with much more discreet in adults less than 18 years, besides, it cannot be said as a torture, because torture is primarily the suffering that takes place before fixing the sentence and before proving guilty^[9].

Solution

The Islamic Penal Code prescribes various forms of corporal punishment as a sentence, exempting minors (as defined above). However, the Islamic Penal Code states that “bodily punishment” to correct the behavior of minors may be necessary in certain situations. Older children may be sentenced to lashing for a range of offences related to sex, false accusations and alcohol consumption. The Penal Code orders other forms of corporal punishment for retaliation for injury, including amputation. All of this has been criticized by human societies. So, in 2005, the Committee on the Rights of the Child urged the government of Iran to immediately halt the imposition and execution of the death penalty and all forms of torture and other cruel, inhuman or degrading treatment or punishment, including amputation, flogging or stoning, for offences committed by persons under 18. It recommended that full approval and implementation of the new Bill on the Establishment of Juvenile Courts be prioritized and that the state party undertake a comprehensive review of domestic legislation to ensure full compliance with the Convention's principles. (CRC/C/15/Add.254, Concluding Observations on Iran's second report, paras. 4, 8, 9, 29, 30, 45, 46, 72 and 73 and on the initial report in 2000, CRC/C/15/Add.123, paras. 29, 30, 37, 38, 53 and 54)^[10]. The Human Rights Committee recommended that Iran revise its domestic laws to limit the number of offences punishable by death and to reduce the number of executions. It urged Iran to halt public executions, ensure that offenders are provided with all necessary guarantees- including the right to a fair trial (art. 14 of Covenant)- and provide human rights training for all members of the police, armed forces and security forces. It further declared that: “Effective measures should be adopted to ensure the strictest observance of articles 7 and 10 of the Covenant. All complaints of extrajudicial executions, disappearances, torture and ill-treatment should be duly investigated, the culprits should be punished and measures should be taken to prevent any recurrence of such acts. Severe forms of punishment incompatible with the Covenant

should be removed from law and practice...” (CCPR/C/79/Add.25, concluding observations on second report, paras. 5, 8, 11, 18 and 19); now what is the solution of Iran rules to optimize its regulations in this case. One of the rules is lazar, it means that if today, corporal punishment makes or causes damage to the honor of Islam, this rule is applied and that penalties can be turned or replaced.

The statement was developed by a national coalition of organizations facilitated by the Children’s Hospital of Eastern Ontario. It summarizes the developmental outcomes associated with physical punishment and concludes that it plays no useful role in the upbringing of children; rather it poses a risk to their development. The statement has been endorsed by religious organizations of a number of faiths, including Christianity, Judaism, Quakers and Islam^[11].

A growing number of Muslim leaders have spoken out about the misuse of Islamic texts which appear to promote violence. Eminent Muslims have argued that the Quran teaches tolerance and moderation and that there is no instance in the Quran of Muhammad striking a child. Respected scholars and leaders highlight in their teaching the strong requirement in Islam to show love and mercy towards children and to preserve their human dignity. The Cairo Declaration on the Convention (CRC) and Islamic Jurisprudence, adopted in 2009, calls for prohibition of corporal punishment in member states of the organization for Islamic Cooperation.

Iran enacted a new Penal Code in 2013, but though the reforms changed the law with regards to the imposition of inhuman sentencing of children, the death penalty, life imprisonment and corporal punishment all remained lawful for offences committed by children. While it should be considered that one of the solution is approximating the positions of the Islamic Republic to human rights through cases such as observing human dignity in the implementation of corporal punishment, notice to special circumstances of the offender at the time of corporal punishment, stop the implementation of corporal punishment in cases of doubt, especially in children, Implementation of corporal punishment as a last resort with no insisting on its implementation.

It seems that all these consideration must be explicitly mentioned in the law to close any criticism by human rights communities to that and in the regard of children, other way rather than corporal punishment should apply for disciplinary procedure.

Conclusion

Despite the transformation of the system of penalties throughout the world and according to time and place, it seems that our society needs to be changed. Scholars and lawyers must attempt to replace or maintain this penalty under certain circumstances. Because in my opinion it does not seem insurmountable and we can eliminate conflicts and adjustments in the law regarding corporal punishment should be considered.

References

1. Robinson DH, Funk DC, Beth A, Bush A. MC hanging beliefs about corporal punishment: Increasing knowledge about ineffectiveness to build more consistent moral and informational beliefs. *Journal of Behavioral Education*, 2005; 14:117-139.

2. Shukla J, Singh N. Implications of corporal punishment on primary school children. *IOSR Journal of Humanities and Social Science (IOSR-JHSS)*, 2013; 15:57-61.
3. Elizabeth G, Bitensky T, Susan H. The case against corporal punishment of children: Converging evidence from social science research and international human rights law and implications for U.S. public policy. *Psychology Public Policy and Law*, 2007; 13:231-272.
4. A/HRC/14/12/Add.1, Report of the working group: Addendum, para, 2010, 19.
5. Corporal punishment of children in Iran, report prepared by the global initiative to end all corporal punishment of children (www.endcorporalpunishment.org), 2017.
6. Asgar K, Mahmood B. Principles governing the physical punishment of children as a punishment in Iran Criminal Law and Jurisprudence. The first and second International Conference on National Conference on the Millennium and Humanities, 2016, 2.
7. Oswaldo R, Chiriboga R. Indigenous corporal punishment in Ecuador and the prohibition of torture and ill treatment. *American University International Law Review*, 2013; 28:27.
8. Hasan P, Raoof R. Comparative study of the crime of torture in Iranian law and the Convention against Torture. *Justice Law Journal*, 2016; 93:51.
9. Isaac H. International criminal court and the Islamic Republic of Iran, Ministry of Foreign Affairs, 1999, 514.
10. Inhuman sentencing of child offenders in Iran Briefing from the Child Rights Information Network-CRIN for the Human Rights Committee Country Report Task Force, (www.crin.org, info@crin.org), Iran (third report - CCRP/C/IRN/3). 2011.
11. Faith-based support for prohibition and elimination of corporal punishment of children-a global overview Prepared by the Churches' Network for Non-violence (churchesfornon-violence.org), 2015.