

Corporal Punishment in the Legislation

A Proposal for Legislative Reform

Introduction and Issue

Pakistan ratified the UN Conventions on the Rights of the Child in November on 1990,¹ and thus began its journey on working to protect its children from PHP, an issue widely believed to be deep-rooted in Pakistani traditions and culture to discipline children. Many gaps, however, in the legislation both nationally and in Punjab stand in the way of significant progress towards this goal.

Arguably the most concerning law with regards to PHP in Pakistan is the Pakistan Penal Code of 1860, specifically Article 89. Article 89 is widely interpreted as providing justification for PHP. This Article seemingly gives permission to caretakers of children to use all means necessary for the ‘benefit’ of children, making it a key law that must be amended if PHP is to be outlawed.

Second, the Criminal Law (Amendment) Act (2015) is an amendment to the Pakistan Penal Code (1860), proposed in 2015 and enacted in 2016. The Act inserted a few articles into the Penal Code, where Article 328A (“Cruelty to a Child”) is of direct relevance to PHP, provisioning the punishment of “whoever willfully assaults, ill-treats, neglects, abandons or does an act” that results in harm or potential harm of a child.² The Article, however, does not explicitly prohibit PHP, and does not supersede Article 89 of the Pakistan Penal Code, thus allowing the defense for PHP to remain in play.

In Punjab, unlike in other provinces in Pakistan such as Sindh and Balochistan, there is a lack of strong explicit legislation at the provincial level banning PHP or corporal punishment. However, it must be noted that in 2014 Punjab passed “The Punjab Free & Compulsory Education Act 2014” which clearly covers and bans corporal punishment under Article 16 section (4) that calls for ensuring that children in school are not subject to corporal punishment or harassment. This is a welcome addition that was much awaited, however to date no rules have been made for implementation of this Act. In the absence of rules notified, Punjab thus places its reliance primarily on the national laws, particularly the Pakistan Penal Code (1860) and its Criminal Law Amendment (2015). Punjab also has The Punjab Destitute and Neglected Children Act (2004), which provides for the punishment of persons who are not the parents or having control of a child and who subject that child to unnecessary physical and mental suffering under Article 35 (“Cruelty to Children”).³ This law, too, is not without its gaps and flaws.

Purpose

The purpose of this proposal is to amend the current legislation pertaining to both Pakistan at the national level and Punjab at the provincial level in order to ban corporal punishment in all settings in the province of Punjab.

¹ UNICEF Pakistan, *The Child Rights Convention, in your language*, available at: https://www.unicef.org/pakistan/media_6667.htm [accessed 7 December 2017]

² Criminal Law Amendment Act (2015), available at: http://www.senate.gov.pk/uploads/documents/1450099224_165.pdf [accessed 7 December 2017]

³ Punjab Destitute and Neglected Children Act, 2004, available at: http://punjablaws.gov.pk/laws/472.html#_ftn17 [accessed 7 December 2017]

Proposal

Although the current legislation has made significant progress to achieve the goal of ending corporal punishment, there remain many gaps that need to be addressed in order to protect our children. This proposal seeks to address these lacuna in the law both at the national level and at the provincial level of Punjab to enhance the strength of the law to protect children from corporal punishment as well as increase the comprehensiveness of the existing legislation. An insertion to the current legislation at the provincial level is also proposed. Details of these are as follows.

1. Pakistan Penal Code (Act XLV of 1860)
 - a) It is proposed that Article 89 of the Pakistan Penal Code (PPC) is reconciled with Article 328A of the PPC, whereby Article 328A was inserted into the PPC in 2016 as a result of The Criminal Law (Second Amendment) Act (2016). The two Articles currently contradict on issues of corporal punishment.
 - b) This proposal suggests that in order to achieve suggestion 1(a) above, Article 89 of the PPC should be removed from the legislation.
 - c) Article 328A of the PPC is a compoundable law, meaning that an agreement can be reached between the perpetrator and the victim's families to drop the charges. This law should be amended to ensure that it is a non-compoundable law, increasing the strength of the punishment thus the effectiveness of the Article.
2. Punjab Free and Compulsory Education Act (2014)
 - a) The Punjab Free and Compulsory Education Act addresses corporal punishment through Article 16 Section (4), which states that "The teacher or incharge of a school shall ensure that a child studying in the school is not subjected to corporal punishment or harassment."⁴ The article fails to define corporal punishment however, making the law somewhat subjective in this case. It is suggested that the article incorporate an explicit definition of corporal punishment, ideally the definition from The Sindh Prohibition of Corporal Punishment Act (2016), which reads as follows:

"corporal" or "physical" punishment means any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light it may be, which may involve hitting ("smacking", "slapping", "Spanking") a child, with the hand or with an implement (a whip, stick, belt, shoe, wooden spoon, etc) including kicking, shaking or throwing a child, scratching, pinching, biting, pulling hair or boxing ears. Forcing a child to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing a child's mouth out with soap or forcing him to swallow hot spices), including mental abuse or any other kind of punishment but not limited to:

 - (i) "assault" as defined in section 351 of the Pakistan Penal Code (Act XLV of 1860) hereinafter referred to in this section "as the said Code";
 - (ii) "hurt as defined in section 332 of the said Code;
 - (iii) "criminal force" as defined in section 350 of the said Code; and
 - (iv) other non-physical forms of punishment which are cruel and degrading, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child;

⁴ The Punjab Free and Compulsory Education Act, 2014, available at: <http://punjablaws.gov.pk/laws/2580.html> [accessed 7 December 2017]

- b) It is suggested that another method of achieving 2(a) is by an inclusion of the aforementioned definition of corporal punishment into the Rules for The Punjab Free and Compulsory Education Act. The Rules should strongly address both this definition and the implementation of Article 16 Section (4) of the Act.
3. The Punjab Prohibition of Corporal Punishment Act (Proposed)
- a) It is proposed that a new law be added to the existing legislation in Punjab, that mirrors The Sindh Prohibition of Corporal Punishment Act (2016) and strongly bans the occurrence of corporal punishment in all settings for all children, from birth to 18 years of age. The legislation should cover punishment in all schools, workplaces and homes, and should ideally include all Physical and Humiliating Punishment of children in addition to the corporal punishment of children.

Concluding Remarks

To conclude, we strongly urge legislators to amend the Pakistan Penal Code (1860) by removing Article 89 and amend Article 328A to make it non-compoundable. Further, we urge that The Punjab Free and Compulsory Education Act (2014) should incorporate a comprehensive definition of corporal punishment, either in the Act itself or in the Rules of the Act. Lastly, we recommend that a separate law be introduced in Punjab that mirrors The Sindh Prohibition of Corporal Punishment Act (2016) to outlaw the use of corporal punishment (ideally extended to all Physical and Humiliating Punishment) of children in all settings, be in at homes, in schools, in the workplace or in communities at large.