

^{AS}
[TO BE INTRODUCED IN THE SENATE]

A
Bill

to make provisions for prohibition of corporal punishment against children

WHEREAS the Constitution recognizes the inviolability of dignity of a person as a fundamental right;

WHEREAS it is necessary to make provisions for the protection of children against corporal punishment by any person, at the work place, in all types of educational institutions, including formal, non-formal, and religious, in each case both public and private, in child care institutions, including foster care institutions and rehabilitation centers, and in any other alternative care settings, in each case both public and private, and in the Juvenile Justice System;

AND WHEREAS Pakistan has ratified the United Nations Convention on the Rights of the Child (1989), and in accordance with Article 19 of this Convention, Government of Pakistan has committed to taking all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, and maltreatment or exploitation;

It is hereby enacted as follows:-

1. Short title, extent and Commencement.- (1) This Act may be called the Islamabad Capital Territory Prohibition of Corporal Punishment Act, 2021.

(2) It extends to the Islamabad Capital Territory.

(3) It shall come into force at once.

2. Definitions. - (1) In this Act, unless the context otherwise requires:-

(a) "care institution" means an educational institution, an orphanage or a place of safety for one or more children for the purposes of providing alternative care or foster care; it may include a children's home, rehabilitation center or shelter, either on permanent or temporary basis, whether public or private, registered or unregistered;

(b) "child" means any person under the age of eighteen years;

(c) "Competent Authority" means any of the committees notified in terms of section 5;

(d) "corporal 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 electrocuting a child, causing a child to forcibly ingest any substance, or washing a child's mouth out with soap, along with any punishment involving coercive or threatening conduct, such punishments to include but not be 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 or which threaten or scare a child;
- (e) "educational institution" means any institution where any kind of education is imparted in a formal or non-formal way on a full time or part time basis, including schools, seminaries, *deeni madaris* or boarding houses, in each case both public or private, registered or unregistered;
- (f) "work place" means the place of work or the premises where an organization or employer operates, and includes a building, factory, shop, commercial establishment, workshop, farm, residential hotel or restaurant, open area or a larger geographical area where the activities of an organization or of an employer are carried out and including any situation that is linked to official work or official activity outside the office.

(2) Words and expressions used but not defined herein shall have the same meanings as assigned in the respective applicable laws.

3. Prohibition of Corporal Punishment. – (1) A child has the right to be shown respect for his personality and individuality and shall not be made subject to corporal punishment.

(2) Notwithstanding anything contained in section 89 of the Pakistan Penal Code, 1860 and any other law, rule or regulation for the time being in force, corporal punishment of children is prohibited in all its forms, at the work place, in private and public educational institutions, including formal, non-formal, and religious, in care institutions including foster care institutions and rehabilitation centers, and in any other alternative care settings, in each case both public and private, and in the Juvenile Justice System.

(3) Disciplinary measures concerning the child may only be taken in accordance with the child's dignity, and under no circumstances shall the infliction of any kind of corporal punishment on a child be allowed.

4. Penalties.- (1) Whoever violates the provisions of section 3 shall be liable to the punishments prescribed for the related offences in the Pakistan Penal Code, 1860 (Act XLV of 1860) and in any other applicable law.

(2) **Whoever** violates the provisions of section 3 in any educational institution, care institution, work place or in any other similar setting shall also be liable to the following minor and major penalties in addition to those referred to in sub-section (1):-

(a) Minor penalties:

(i) censure;

(ii) withholding, for a specific period, promotion or increment, otherwise than for unfitness for promotion or financial advancement in accordance with the rules or orders pertaining to the service or post; and

(iii) stoppage from promotion for a specific period, at an efficiency bar in the time - scale, otherwise than for unfitness to cross such bar.

(b) Major penalties:

(i) demotion to a lower post or time-scale, or to a lower stage in a time scale;

(ii) compulsory retirement;

(iii) removal from service; and

(iv) dismissal from service.

5. Competent Authority.- (1) The Competent Authority to receive complaints, conduct inquiry and fix penalties in terms of sub-section (2) of section 4 shall be:-

(a) in case of a public sector educational institution, a committee notified by the Ministry of Federal Education and Professional Training;

(b) in case of a religious seminary or a *deeni madrasa*, a committee notified by the *Wafaq-ul-Madaris*; and

(c) in all other cases, a committee notified by the Ministry of Human Rights.

(2) Each committee shall be notified as aforesaid within thirty days of the enactment of this Act and shall consist of three members of whom at least one member shall be a woman. A chairperson shall be designated from amongst the committee members.

6. Procedure for complaint.- (1) A complaint under this Act may be filed with the Competent Authority in writing by the child on whom corporal punishment is inflicted or the parent of such child or such child's next of kin.

(2) The Competent Authority shall decide the complaint within thirty days of its receipt.

(3) For this purpose, the Competent Authority shall:-

- (a) within three days of receipt of a written complaint, communicate to the accused the charges and statement of allegations leveled against him, the formal written receipt of which shall be given;
- (b) require the accused within seven days from the day the charge is communicated to him to submit a written defense; and
- (c) enquire into the charge and may examine such oral or documentary evidence in support of the charge or in defense of the accused as the Competent Authority may consider necessary and each party shall be entitled to cross-examine the witnesses against him:

Provided that if the accused fails to submit a written defense without reasonable cause, the Competent Authority shall proceed ex-parte.

(4) Subject to the provisions of this Act and any rules made thereunder the Competent Authority shall have power to regulate its own procedure for conducting inquiry and for fixing the place and time of its sitting.

(5) The Competent Authority shall give its decision in writing by recording reasons thereof.

(6) The Competent Authority shall have power:-

- (a) to summon and enforce attendance of any person and examine him on oath;
- (b) to require the discovery and production of any document;
- (c) to receive evidence on affidavits; and
- (d) to record evidence.

(7) The Competent Authority shall have the power to inquire into the matters of corporal punishment under this Act, to get any party involved medically examined by an authorized doctor, if necessary, and may impose appropriate penalty against the accused within the meaning of sub-section (2) of section 4.

7. Appeal against the decision of Competent Authority.- (1) Any person aggrieved by a decision of the Competent Authority may, within thirty days of communication thereof, appeal to the Federal Ombudsman holding office under the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983.

(2) The appeal filed under sub-section (1) shall be decided within thirty days.

(3) Any person aggrieved by a decision of the Federal Ombudsman under sub-section (2), may, within thirty days of decision, make a representation to the President of Pakistan who may pass such order thereon as he may deem fit.

8. Cognizance of Offence.- In terms of sub-section (1) of section 4, cognizance of an offence under this Act shall be taken by a court of competent jurisdiction on the

complaint of a child on whom corporal punishment is inflicted or the parent of such child or such child's next of kin.

9. Enforcement of the provisions of this Act.- The Federal Government shall devise a comprehensive system for the enforcement and monitoring of this Act and develop a Code of Conduct for prohibition of corporal punishment as contemplated by this Act, and shall make efforts to create the requisite deterrence and awareness amongst the stakeholders.

10. Act to override other laws. The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force.

11. Power to make rules.- The Federal Government may make rules to carry out the purposes of this Act.

STATEMENT OF OBJECTS AND REASONS

Physicians, psychologists, and educationists around the globe have pointed out towards negative effects of physical punishment of children on their mental and cognitive development. Countless studies have proved that corporal punishment and uncongenial learning environment creates a number of psycho-social imbalances in the personalities of children including aggression. Experts have consensus that physical punishment can have adverse consequences on the child's health; particularly their behavior and emotional wellbeing. One of the reasons attributed to the higher drop-out rate in schools and low learning outcomes of students is physical punishment and castigation of pupils by the teachers.

The cases of injuries inflicted by teachers on their students are regularly reported by the media. In accordance with the United Nations Convention on the Rights of the Child (1989) ratified by Pakistan, it is now the responsibility of the state to protect children from all forms of physical and mental violence and maltreatment. Therefore, it is desirable that corporal punishment is banned legally and declared an offense through an Act.

**SENATOR SAADIA ABBASI
SENATOR WALID IQBAL
MEMBERS-IN-CHARGE**

