

## On the Problem of Educational Punishment

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### Abstract

**In recent years, educational punishment has always been a hot issue of social concern and public concern. On the one hand, some students caregivers to spoil, reluctant to scold and discipline, some parents are too "justifying a fault", on the other hand concern careless disciplinary measures is undeserved, cause unnecessary conflict, the teacher faces can't tube, don't want to pipe, not problem, so that some students rule consciousness, school violence, not management, disrupt the teaching order things happen.**

### Keywords

**Educational punishment; Corporal punishment; Laws and regulations.**

### 1. Foreword

As a correct way of education, punishment not only has legal basis, but also has theoretical basis. Locke clear sure retribution in the education cartoons, he thinks "have this slave discipline, its form is also have a slave temper, threaten the a pointer, children would yield, is to be able to make them obey, but once there is no pointer, nobody see, know not punished, the more he will let his natural tendency" at the same time he also must discipline, He argued that "whatever strict regulation is needed, the younger the child, the more he must use it; Once moderate application has been achieved, it should be relaxed and a gentler discipline should be used. Although teachers are allowed to have the power of punishment in education, punishment is only the means, and discipline is the goal. For example, Comenius mentioned in The Great Teaching that "people who have made mistakes should be punished, but they should be punished not because they have made mistakes, but to prevent them from committing them in the future". Soviet educator Makalenko even believed that "punishment is not only a right, but also an obligation", which shows that education without punishment is incomplete education.

### 2. Analysis of the Reasons for the Prominent Problems of Educational Punishment

#### 2.1. On The Legal Level, the Details of the Education Law Are Not Perfect

According to article 27 of the Compulsory Education Law of 1986, schools shall criticize and educate students who violate the school management system, and shall not expel them. Corporal punishment is also prohibited. Article 27 of the 1991 Law on the Protection of Minors stipulates that teachers and staff of schools and kindergartens shall respect the personal dignity of minors and shall not impose corporal punishment, disguised corporal punishment or other acts that insult the personal dignity of minors. According to article 37 of Teachers Law of the People's Republic of China 1993, teachers who punish students physically and do not change after education shall be punished or dismissed by schools, other educational institutions or the education administration Department. If the circumstances are serious, they shall be investigated for criminal responsibility according to law. According to article 29 of the Education Law of the People's Republic of China in 1995, schools and other institutions have the right to manage the school roll of educatees, award and take disciplinary measures against

them. Article 12,200 of the Civil Code stipulates that if a person with limited capacity for civil conduct suffers personal injury while studying in a school or other educational institution and the school or other institution fails to fulfill its educational and administrative duties, he/she shall bear tort liability. It is worth noting that the Administrative Measures for Primary and Secondary Schools of Qingdao issued in 2017 stipulates that "students who interfere with the education order in primary and secondary schools should be criticized or punished appropriately", which means that punishment officially appears in the educational regulations as a concept. The laws and regulations of the above mentioned schools and education institutions have management and disposition, teachers must not corporal punishment or corporal punishment in disguised forms students, these are the punishment of the concept, which can be concluded that education has long been a retribution, though, and even appeared in the education laws and regulations, but beyond that, punishment is always did not appear as a concept in law, Punishment has always been a social and academic concept rather than a legal one. The Rules on Educational Punishment for Primary and Secondary Schools (Trial), formulated and promulgated by the Ministry of Education until March 1, 2021, is the first time that the word "punishment" is mentioned in the national education legislation, marking the formal legalization of educational punishment. Therefore, the lack and imperfection of national laws and regulations on educational punishment is the root cause of the prominent problems of educational punishment in China for a long time.

## **2.2. In Terms of Knowledge, Teachers Do Not Have A Clear Understanding of The Concepts of Punishment and Corporal Punishment**

Education cases in recent years, through analysis we can find that many teachers often confuse retribution and punishment, according to the survey, two-thirds of the teachers can't distinguish between the concept of punishment and corporal punishment, a third of the teachers for punishment and corporal punishment in understanding the concept of fuzzy, but between the two are essentially different, punish the word of an ancient, In Ci Hai, "punishment" is defined as "punishing mistakes to warn the future", indicating that punishment has two meanings: one is to punish mistakes committed in the past and the other is to warn the possibility of future occurrence. The dictionary defines corporal punishment as "physical punishment inflicted by adults (such as parents or teachers) on children, ranging in severity from hitting the palm of the hand to spanking the bottom". First, from the perspective of education purpose, the purpose of education punishment is to manage, discipline or correct students who violate discipline in a prescribed way, so that students can take warning, understand and correct their mistakes. The purpose of corporal punishment is simply to inflict physical pain to compel obedience. Second, from the perspective of law, educational punishment is a legal educational behavior, while corporal punishment is prohibited by law and illegal educational behavior. Third, from the perspective of education effect, and the degree of the students' bad behavior, conform to the law of education appropriate disciplinary measures will have good effect to correct students' errors behavior, can help students cultivate good study habits, and corporal punishment will only cause students physical and mental pain, not only won't have good education effect, but also will be counterproductive.

## **3. The Practical Needs of Educational Punishment**

Educational punishment has always been a hot issue in the field of education that has attracted public attention. Since 2019, the Ministry of Education has organized research on the drafting of the Rules, carried out in-depth theoretical research, listened to the opinions of local education administrative departments, schools, teachers and other parties, and solicited public opinions. On the one hand, it is to solve the problem that teachers dare not use educational punishment or even give up using educational punishment in the teaching process due to

parents' excessive rights protection. On the other hand, it is to solve the problem that some teachers are not clear about the boundary between educational punishment and corporal punishment, causing excessive punishment to become corporal punishment. The promulgation of The Rules on The Implementation of Educational Punishment by Primary and Secondary School Teachers (hereinafter referred to as the Rules) can be said to fill the gap in the legislation of educational punishment in China, so that teachers' disciplinary behavior has laws to follow. According to the latest Rules, punishment not only appears in laws as a concept, but also embodies the methods of punishment. For example, the latest Rules stipulates that the methods of punishment are as follows: Shamed, do apologize, oral or written review, an additional public service, a class make stand as punishment, after class in the classroom instruction, at the same time, we also noticed that the new "rules" also mentioned the teacher also can consult when disciplinary school rules or the convention rules, class work, these are all the established rules, and parents but still some scholars put forward, If the method of punishment is too clear, will teachers lose their right to impose punishment freely? Therefore, educational punishment should not only be legislated, but also be supplemented with educational punishment procedures and administrative guidance.

#### **4. To Solve the Problem of Educational Punishment in China**

Around foreign punishment legislation development process, we can find that many countries have long been the United States, Germany, Japan thereof have relevant legal as education disciplinary actions, taking Japan as an example, the rules of the school education law: "the President and members of the faculty think necessary on education, can be in accordance with the provisions of the supervising organ punishment on children and students, but not corporal punishment." But with our national education law value discipline result, Japan more considering disciplinary education teacher motivation and the education situation, that is to say the Japanese judicial judge whether a teacher education behavior belongs to corporal punishment, whether the unlawful, both need to be consider from the perspective of teachers, and need to be consider from the Angle of the students. From the perspective of teachers, it is necessary to consider whether teachers' educational behaviors are for educational purposes, whether teachers' educational methods, degree and duration are acceptable to students, and whether students' age, physical condition, location and degree of bad behaviors are also needed to be considered from the perspective of students. Second, The Japanese punishment law also has corresponding administrative guidance. For example, the Japanese Ministry of Health, Labour and Welfare issued the Prohibition of Abuse of Authority Related to Punishment in 1998, which defined the means of punishment and the abuse situation, and further explained the educational punishment. In fact, this has formed a "trinity" education system of legislation + judicature + administrative guidance, which has played the role of the overall synergy of education. Punishment legislation has a history of more than seventy years in Japan, Japan's education in the field of education and punishment for the constant exploration and high-value, accumulated a lot of practice experience, in contrast, education disciplinary development course in our country, "the rules" can be said to be issued by education disciplinary field landmark event, not only marks the education disciplinary law, will punish way refinement, It's materialized. Combined with education and punishment, however, are real, the application in specific conditions there are still some untouched sensitive corner, disciplinary education legislation still have very big improvement space, we should be drawing on the experience of Japan retribution, the good and discard the dregs, perfect match with the "rules" entity laws of procedural law, the construction of the rule of law education, form a new pattern of administering education according to law in an all-round way.

#### 4.1. The Specific Rules of Punishment Need to Be Refined

Japan's science ministry put forward for teachers on children of violence, such as teachers etc for self-defense to exercise the lines of force (visible physical strength), was not as a teacher's disciplinary behavior and, so to the body caused by the infringement case doesn't belong to corporal punishment or the pain of the body, do not assume criminal or civil, This provides a legal basis for whether teachers can use certain physical force to defend or avoid danger in educational punishment. Combing the existing legislation in our country, though clearly put forward to protect the lawful rights and interests of teachers from the aspects of law, for major cases of violations of the rights and interests of teachers and inspection office shall be handed over to the public security organs, but the teacher in the justifiable defense whether can make physical contact with the student, whether can use the lines of force, our country law does not authorize, normalized in order to promote the education of legal system, China should further improve the disciplinary rules from the legal perspective.

#### 4.2. Case Guidance System Needs to Be Improved

In view of some specific problems in the application of educational punishment, education laws and regulations are difficult to cover all aspects, which requires guiding judicial cases to further explain relevant legal principles. Through carding of teacher and student rights dispute cases in recent years, we can find the teacher corporal punishment student of the opposite sex case, lack of teachers' reasonable exercise the right of punishment, punishment duty of positive cases, and the case of the punishment and corporal punishment and corporal punishment in disguised forms involved in no semantic clarifying, this suggests that the justice in the courts, To protect the rights and interests of students and hold teachers accountable.

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