

RESEARCH ARTICLE

To Report or Not to Report: A School Counselor's Ethical Dilemma Concerning Child Abuse

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ABSTRACT

Child abuse is a crime, and reporting such abuse is required by law in many professions. School counselors are obligated to report abuse or can face legal repercussions such as fines or lawsuits or even the loss of their jobs, depending on school policies. This paper will explore the various outcomes of reporting and not reporting physical abuse of a Muslim child by a Muslim counselor in the United States, based on analyzing the factors of the US law, Islamic law, culture, and ethics. Three main dimensions to this predicament will be examined, which are the concept of disciplining children and whether beating is an effective and acceptable technique both Islamically and ethically, the legal perspective and its possible consequences, and the Islamic juristic viewpoint based on the above-mentioned factors. Delineating these matters will clarify the repercussions of either course of action the counselor decides to take.

Keywords: Islamic ethics; school counseling; child abuse; Islam; discipline

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INTRODUCTION

Sarah is a licensed school counselor in Massachusetts, USA, who discovers that Sarmad, an eight-year-old Muslim child, is being physically abused at home. Sarah is a Muslim herself and active in the Islamic community where she frequently encounters Sarmad's parents. Being a refugee from Iraq, Sarmad has been working with Sarah at school, but one day she notices that he is not himself. Sarah is able to confirm, with hesitation from Sarmad, that he often gets beaten at home and that the physical abuse has become more violent and intense lately. She fears for his safety and physical well-being but also fears the outcome of reporting the abuse. Sarah knows that the definition of abuse varies culturally, but in this case, reporting the child would likely result in his being removed from his home and placed in foster care. It is also probable that his siblings will likewise be removed and that they may all be placed in different homes. These foster homes will almost certainly be non-Muslim homes, and she worries that the children will lose their faith and be raised as non-Muslims. Additionally, she worries about facing his parents in the mosque when they discover that she reported them. If she does not report, she will face legal consequences, as she is required by law to report child abuse. Sarah finds herself in a very difficult situation with complex legal, ethical, and religious outcomes regardless of whether she reports or does not report Sarmad's case to the authorities.

CONCEPTUALIZING THE DILEMMA

To navigate this dilemma and determine the outcomes of reporting and not reporting, various elements must be carefully analyzed. This paper will examine three main dimensions to this predicament, which are the concept of disciplining children and whether beating is an effective and acceptable technique both Islamically and ethically, the legal perspective and its possible consequences, and the Islamic juristic viewpoint based on the above-mentioned factors. Delineating these matters will clarify the repercussions of either course of action Sarah decides to take.

BEATING AS DISCIPLINARY ACTION

The technique of beating as a disciplinary tool and the question of whether beating is inherently bad depend on the extent of beating. In the context of this dilemma, beating is referred to that which is causing physical and psychological harm, which we can argue is inherently bad from both Islamic and ethical perspectives. While the main source of ethical value in Islam is revelation, the Qur'an also mentions concepts of which the ontology can be discovered through reason.¹ Hourani, in his *Reason and Tradition in Islamic Ethics*, states that "In spite of the heavy emphasis on reliance on revelation, the use of independent reason in ethical judgements is never ruled out explicitly in the

1 Hourani 1985.

Qur'an."² This reasoning would therefore apply to the concept of beating that causes such harm as being inherently bad, which is also a universal value as it falls under the "Golden Rule" of respecting and not hurting others.³

Child abuse is defined as "serious physical injury or injuries inflicted (by) other than accidental means."⁴ This violence is inherently unethical from all perspectives, and numerous Islamic texts illustrate this specifically from an ethical voluntarism viewpoint. One such text is a famous tradition of the Prophet (PBUH) that jurists also codified as a legal maxim; it states that "there should be neither harming nor reciprocating harm."⁵ A book published by Al-Azhar University in cooperation with UNICEF, titled *Children in Islam: Their Care, Upbringing and Protection*, states that:

...disciplining the child should take place without the use of violence or abusive language, however; children should be brought up with pride and self-confidence. It is in this light that we understand the saying of the Prophet, Peace Be Upon Him: "May Allah have mercy on a parent who helps his (or her) child be grateful and kind to him (or her)."⁶

The authors also elucidate that "given that it is not permissible to incur harm, no parent...has the right to smack a child; this would inevitably inflict psychological as well as physical damage. Both psychological and physical damages have been banned by the Islamic *Shari'a*."⁷ The book further states that corporal punishment should be avoided as a disciplinary means, in favor of other techniques.⁸ This concept of not resorting to corporal punishment, specifically if it is harmful or will result in more harm than benefit, is also evident in the discourses of early Muslim scholars. Abu'l Hasan al-Qabisi (d. 1012 CE) advocated that the best approach to discipline is to communicate with the child with kindness, because "the child, despite his immaturity, is a human being who is, unlike an animal, endowed with the gift of reason and the ability to know the causes of things."⁹ Similarly, Abu Hamid al-Ghazali (d. 1111) advised against frequent rebuking of children as "recurrent admonition and rebuke may adversely affect a child's ability to respond to 'gentle advice and normal communication,'" and Ibn Khaldun (d. 1406) likewise adopted this view and cautioned about the harmful consequences of severe discipline.¹⁰ Thus, it is clear that abusive beating would be ontologically and epistemologically wrong in Islam.

Aside from the Islamic perspective, many studies have also indicated the ineffectiveness of corporal punishment. While the concepts of discipline vary across

2 Hourani 1985, 43.

3 Kinnier, Kernes, & Dautheribes 2000.

4 Sussman 1974, 252–53. This definition is according to The Children's Bureau Model Act.

5 Ibn Majah 2007, 338.

6 55.

7 Al-Azhar University 2005, 56.

8 Al-Azhar University 2005.

9 Kamali 2013, 147.

10 Kamali 2013, 148.

places and cultures, severe beating is universally denounced as it violates the worldwide principle that inflicting harm is unethical. This is evident as the United Nations, in Article 19 of the UN Convention on the Rights of Children, advocates that children must be protected from all forms of physical violence.¹¹ Studies have demonstrated that the negative outcomes of spanking are:

...associated with decreased internalization of morals, diminished quality of parent-child relations, poorer child and adult mental health, increased delinquency and antisocial behavior for children, and increased criminal and antisocial behavior for adults; spanking also was associated with an increased risk of being a victim of abuse...¹²

Children who were spanked "...were more angry, aggressive, and stressed than children who were not disciplined in this way."¹³ It is noteworthy that these studies refer to spanking and not to the use of severe force that causes even greater physical harm. More extreme forms of corporal punishment "can exert biochemical, functional, and structural changes in the brain (e.g., changes in cerebral volume and increased or decreased reactivity to various neurotransmitters)," according to Glasser (2000), as reported by Kazdin and Benjet.¹⁴ Thus, it is clear that corporal punishment, let alone abuse, may not be the most effective means of discipline due to the negative corollaries that ensue from it as is agreed upon both Islamically and ethically.

LEGAL STATUTES REGARDING REPORTING CHILD ABUSE

In almost all states in the United States, school counselors are categorized as mandatory reporters of child abuse.¹⁵ In the state of Massachusetts where Sarah works, the penalty for failing to report child abuse is a fine that does not exceed \$1000; however, if the result of the abuse is serious bodily injury or death, the fine is up to \$5000 and/or a maximum of 2.5 years imprisonment.¹⁶ Failure to inform could also result in civil lawsuits, as a counselor could be sued for negligence if a child is injured.¹⁷ However, despite the requirement to report abuse, research shows that counselors face many dilemmas which affect whether or not they choose to report. Feelings of guilt, the inability to determine what constitutes abuse based on cultural differences, lack of training, religious differences, and not wanting to interfere with disciplinary techniques may all contribute to a counselor not making the report.¹⁸ As a result of all these factors, the decision to report can be very

11 UNICEF, 1989.

12 Kazdin, & Benjet, 2003, 101.

13 Kazdin, & Benjet, 2003, 102.

14 2003, 102.

15 Sandberg, Crabbs, & Crabbs 1988; Remley & Fry 1993; U.S. Department of Health and Human Services, Children's Bureau 2019; Bryant & Milsom 2005; Knapp 1983.

16 U.S. Department of Health and Human Services, Children's Bureau 2019, 13.

17 Remley & Fry 1993, 254.

18 Fields & Nunnelley 1999; Bryant & Milsom 2005.

traumatic for the counselor, as “individuals worry, ‘Will I break up the family? Have I done the right thing? Will the parents be angry? Will I see the child again? Will I have to go to court? Will I lose my job?’”¹⁹ Regardless of these feelings, the law requires that “counselors who suspect child abuse have no option; they must become informants.”²⁰ It is therefore advised that counselors fulfill their legal obligation because the mandatory reporting laws were ratified to protect children from harm.²¹

What are the aftermaths of reporting child abuse? Understanding the entire process demonstrates why counselors like Sarah may still hesitate to report despite legal fines and possible imprisonment. Fields and Nunnelley (1999) state that:

When abuse is reported, a certain amount of guilt for making the accusation is present, along with anxiety and stress associated with the required procedures and possible court experiences. There is always empathy and grave concern for the child, who often exhibits frustrating behavior patterns that are hard to understand. Because of these conflicting emotions, lack of training, and so few support systems for the persons reporting child abuse, individuals may want to ignore suspected abuse.²²

In addition to the emotional turmoil faced by the counselor, victim, and their family, there are legal actions that take place. Child Protection Services investigates the report, and a caseworker is sent to assess the situation. The child may be removed from home temporarily and placed in a shelter, foster home, or with a relative.²³ Depending on the severity of the plausible harm to the child, the family may be required to cooperate with in-home counseling services so that the child can eventually be returned home. However, if the child has been seriously harmed and there is a high risk of further harm and the child’s safety is threatened, he/she will be removed and placed in foster care. In these severe situations, a reunion with the family is unlikely.²⁴ If the child is placed in a home in another district, they will have to attend a new school and no longer work with their counselor.²⁵ Obviously, the relationship between the counselor and the child’s family is strained after the report is made, and even the relationship between the child and the counselor may be affected negatively as the child may blame the counselor for the difficult changes in their circumstances.²⁶ These dynamics create a role conflict and the counselor “...must determine the extent to which he or she can be a positive force in the life of the child abuse victim.”²⁷

19 Fields & Nunnelley 1999, 78.

20 Remley & Fry 1993, 253.

21 Remley & Fry 1993; Fields & Nunnelley 1999.

22 74.

23 U.S. Department of Health and Human Services 2013; Remley & Fry 1993; Fields and Nunnelley 1999.

24 U.S. Department of Health and Human Services 2013.

25 Remley & Fry 1993.

26 Remley & Fry 1993; Fields and Nunnelley 1999.

27 Remley & Fry 1993, 258.

Thus, it is apparent that the counselor faces several quandaries based on the legal consequences of reporting child abuse, and someone like Sarah will have to deal with the guilt of breaking up the family, the embarrassment of seeing Sarmad's parents in the mosque when they come to know that she reported them, the risk of him being placed in another district and not being able to counsel him, or even that he sees her as a traitor and responsible for the disruption in his life. Additionally, she wrestles with the Islamic perspective as regards to reporting.

ISLAMIC JURISTIC PERSPECTIVE

As a Muslim, Sarah has an added conflicting factor in her decision. In Islamic legal theory, this dilemma can be assessed in light of the higher objectives of the *Sharī'a* (*maqāṣid al-Sharī'a*). The *Sharī'a* pursues the preservation of the essential interests of human beings as a top priority. The five objectives of the *Sharī'a* are the preservation of faith, life, intellect, lineage, and wealth, and this order of importance is attributed to Al-Ghazali.²⁸ It is clear according to this classification that the preservation of faith takes priority over the remaining interests. However, there was some debate among scholars as to whether or not life should precede faith, but the majority of jurists maintained that faith takes precedence because all of the five interests are essentially interconnected and depend on each other. The preservation of life is for the ultimate purpose of worshipping God and obeying Him, and the remaining interests of intellect, property, and lineage are associated with the preservation of life.²⁹ An important distinction in this hierarchy was illustrated by Draz (d. 1958) who explicated that the precedence of faith over life is in the protection of the essentials of the faith over life, rather than the branches which may be compromised at times to give priority to life.³⁰ Thus, it is evident why the preservation of faith is first and foremost as "a person without faith is a person without life."³¹ The scholars agreed upon the ranking of the preservation of life after faith but differed in the ranking of intellect or lineage.³²

As regards ensuring the preservation of these five essentials, legal scholars discussed safeguarding them by establishing and strengthening them, as well as by averting all harm that might compromise them. An instrument that strengthens the preservation of faith is the Islamic duty of enjoining good and forbidding evil, as it averts any harm that may affect faith. In fact, Al-Shatibi (d. 1388) stated that enjoining good and forbidding evil ensures the preservation of all of the essentials from the perspective of averting harm that may affect them.³³ This duty is not confined to scholars but instead is "...incumbent on

28 Al-Ghazali 1937, 287; Al-Shatibi 1997.

29 Al-Yubi, 1998; Atiyya 2003.

30 Atiyya 2003, 35–7.

31 Al-Yubi, 1998, 193–4.

32 Al-Yubi, 1998, 314.

33 Ibn Zughayba 1996, 175.

Muslims at large.”³⁴ The protection of faith is also achieved by alienating and rejecting what removes or changes it.³⁵

The preservation of life is safeguarded within the *Sharī‘a* as there are numerous rulings that ensure its benefit and repel harm. These rulings mandate that human beings are protected from harmful physical and emotional elements, are provided with what is required for survival, that their limbs and body are protected from losing their function, and that harm is removed before it befalls a person.³⁶ Based on these decrees, it is evident that physical abuse goes against the objective of the *Sharī‘a* in its preservation of life.

Preservation of one’s intellect is also one of the essential aims of the *Sharī‘a*, as it is used to reflect the existence of God as well as what makes a person accountable for their actions. Scholars mention that the protection of intellect refers to safeguarding it from physical and psychological harm. This is achieved by prohibiting what distorts the intellect by material things such as intoxicants, as well as what causes spiritual and psychological harm.³⁷ The psychological trauma that results from abuse, as well as the trauma that may result from being removed from home, are aspects that would need to be considered in determining a ruling in Sarmad’s case.

The last essential that has relevance to the problem at hand is the preservation of lineage. Scholars mention the preservation of lineage in terms of linking a child to their biological parents, as well as not leaving the child to be lost without a guardian to guide them and ensure the establishment of the other essentials, faith being the primary one.³⁸ In the case of Sarmad, it is clear that if he is placed in a non-Muslim foster home permanently, the preservation of his lineage from both aspects will be in jeopardy.

Taking into account the objectives of the *Sharī‘a* in the preservation of faith, life, intellect, and lineage, Sarmad’s case proves to be quite difficult as all of these essentials are at risk. Furthermore, Sarah must consider the duty of enjoining good and forbidding evil as well as the requirement to abide by the civil law. As a Muslim living in a non-Muslim country, Sarah is obliged to abide by the law of the land as long as that law does not violate the *Sharī‘a*.³⁹ Nevertheless, the fundamental issue is that being placed in a non-Muslim foster home would be detrimental to the preservation of faith.

ETHICAL REASONING

Given the complexity of issues in Sarmad’s case of whether or not to report child abuse, Sarah finds herself torn between prioritizing the safeguarding of Sarmad’s faith or his physical and psychological well-being and her own professional career. The more she ponders her options, the more questions she has than answers.

34 Cook 2001, 488.

35 AlYubi 1998, 195, 206.

36 Ibn Zughayba 1996, 177–9.

37 Al-Yubi, 1998, 236–7; Atiyya 2003, 39–40; Ibn Zughayba 1996, 181.

38 Ibn Zughayba 1996; Atiyya 2003; Al-Yubi 1998.

39 Islam Question and Answer 2018.

Option 1: To Report Child Abuse

Legally, Sarah is required to report the abuse as she may encounter serious consequences if he is critically harmed, and could be held accountable for failing to report. She could face fines, imprisonment, or lose her job. At the same time, many counselors do not report abuse and are able to escape the penalties, but it is a grave risk. Islamically, she is also required to follow the law of the land she lives in. Child abuse is Islamically forbidden, and she has a religious duty to enjoin good and forbid evil, but do these factors take precedence when Sarmad's faith itself is at stake? If she reports abuse, Sarmad will most likely be removed from his home and perhaps his siblings will be removed as well. The whole family will be split, and she will be blamed as the cause of this tragedy. She will feel an enormous amount of guilt, and her reputation at the mosque will be tarnished. Conversely, she fears for Sarmad's safety, both physical and psychological, if he continues to be beaten. Yet, there is also a possibility that reporting the abuse will have worse psychological effects, as "child abuse is a terrible experience for children; the process that follows a report, however, sometimes is more traumatic than the abuse."⁴⁰ The trauma of being taken away from his family may have severe psychological effects, which would be the equivalent to jeopardizing his intellect. Sarah's principal concern is that if she reports abuse and Sarmad is removed from his family, he will lose his faith if he is not reunited with them later. She will have to bear the immense burden of his "going astray." His lineage may also be lost, as he will not have someone to ensure his Islamic upbringing, and he may even forget his connection to his biological parents if he remains in foster care for the remainder of his childhood. Thus, while reporting the abuse is her legal obligation and will keep her safe from official consequences, she will live with the guilt of breaking up a Muslim family in her community, and with fear that she will have to answer to God if Sarmad loses his faith, lineage, and intellect, both of which are immense causes of stress and will continually affect her own well-being.

Option 2: Not to Report Child Abuse

Islamically, the preservation of faith takes precedence over everything else, as without faith, nothing else will bring happiness in this world or the next. Islam also safeguards life, intellect, and lineage as they ultimately support the preservation of faith. Additionally, causing harm is forbidden, whether physical or psychological, and violates the right of a child upon his/her parents. If Sarah chooses not to report abuse, Sarmad will not be removed from his home and placed in foster care, so his faith is protected. However, his life and intellect will be harmed because of physical and emotional trauma, which are a significant concern for Sarah. Furthermore, since the five essentials are connected, the negative physical and psychological effects of abuse may affect Sarmad's faith regardless. She will also face the risk of legal penalties if she is found guilty of not reporting child abuse. Moreover, she feels a sense of religious duty to enjoin good and forbid evil by advising Sarmad's parents that this abuse is not Islamically or legally acceptable. The

40 Remley & Fry 1993, 253.

primary issues Sarah confronts in not reporting are the concern about Sarmad's physical and psychological well-being and the legal repercussions she may encounter for failing to uphold the law.

It is clear to Sarah that, morally, she has a responsibility to act even if she does not report. The legal, religious, and ethical repercussions of both reporting and not reporting are conflicting, but in all cases she has a moral obligation to try and better the situation. The least she can do is begin by fulfilling her religious and moral duty to enjoin good and forbid evil by talking to Sarmad's parents and informing them about the psychological, physical, and legal ramifications of their abuse. She may enlighten them that Islamically their actions are not condonable and that she will report the abuse, which will result in legal consequences. This may be a reasonable first step in informing them that their actions are unacceptable and explaining the laws and regulations regarding such actions in the United States. It is possible that this admonition and warning may suffice in improving the situation and she may not have to resort to reporting, which would result in more severe action.

CONCLUSION

Sarah finds herself immersed in an overwhelming ethical predicament in which faith, moral values, and legal obligations are intertwined, and struggles to choose the best course of action. She is pulled by her faith in different directions as the Islamic legal discourse indicates that both reporting and not reporting have some religious justification. Legally, she would be liable for not reporting, which could affect her career. Not reporting guarantees the preservation of Sarmad's faith, and there is a chance that with some admonition, his parents may stop abusing him, yet the legal consequences still remain a threat. Reporting would most likely result in his losing his faith and family, and Sarah would have to live with the guilt and fear of being responsible for these outcomes. Her moral conscience distresses her as she is religiously and ethically obligated to help Sarmad, yet it is unclear which option will truly result in what is best for him and his future. Applying the Islamic legal maxim "in the presence of two harms/evils the one whose damage is greater is avoided by committing the lesser harm" (*idha ta'aradat maḥṣadātān rū'ya a'zamuhuma ḍararan bi irtikab akhaffihima*) in this dilemma suggests that perhaps less harm would result from not reporting, provided that she highlights the consequences of the abuse to his parents and advises them to stop.

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