

Observations on China's Educational Discipline Policies: Taking Japan and South Korea's Educational Discipline as a Reference

Yinglin Luo*

Department of Society, Hanyang University, Seoul, South Korea

*Corresponding author: 2018058022@hanyang.ac.kr

Abstract. Educational discipline refers to the process of educational behavior to stop and eliminate students' misbehavior, to help students correct their mistakes for the purpose of punishment as a characteristic of a form of education. The study analyzes the current situation of Educational discipline in China and its shortcomings, categorizes and analyzes the abuse of Educational discipline in China, the lack of use of Educational discipline, and the blurring of the concepts of Educational discipline and corporal punishment, punishment, and so on. At the same time, the study analyzes the policies related to Educational discipline in Japan and South Korea, and puts forward suggestions for the future development of China's Educational discipline policy and the problems that need to be avoided through the clear breakdown of the rules of corporal punishment in Japan and the infringement of the right to Educational discipline in South Korea due to the Human Rights of Students Ordinance.

Keywords: Educational discipline; corporal punishment; education law; power; policies.

1. Introduction

There are various problems with the policies relating to the power of teachers in Chinese society today. For example, there are many schools where teachers have too much power to arbitrarily discipline or even physically punish students, while students "acquiesce" or "dare not speak out"; on the other hand, driven by the idea of guaranteeing the rights and interests of students and human rights, teachers in many schools are not able to control students through reasonable measures, which is reflected in the teaching process where there are behaviors that "do not care" or feedback from students and parents that "they do not care about students and are irresponsible". On the other hand, driven by the idea of guaranteeing students' rights and human rights, teachers in many schools are unable to restrain students through reasonable measures, which is reflected in the existence of the behavior of "not caring as much as they can" in the process of teaching and learning, or in the feedback from students and parents that they "do not care about the students, and are not responsible". Many cases of parental reporting have arisen in the process, but some parents of students have abused the reporting system by maliciously reporting on teachers with subjective personal grievances, forcing some teachers who abide by professional ethics and teach normally to come under scrutiny, jeopardizing their reputation, or even being removed from their teaching posts.

China has many laws and policies on corporal punishment and the right to discipline, but they are still inadequate. Article 29 of the Compulsory Education Law of the People's Republic of China stipulates that students may not be subjected to corporal punishment, disguised corporal punishment, or other insults to human dignity. Article 29 (4) of the Education Law of the People's Republic of China provides that schools and other educational institutions have the right to manage the school records of educated persons and to impose rewards or punishments. However, none of these regulations clearly stipulate the definition and scope of the right to discipline in education. Until December 23, 2020, the Ministry of Education of the People's Republic of China adopted the "Rules for Discipline in Primary and Secondary Schools (for Trial Implementation)", which came into force on March 1, 2021, to define the reasons for discipline, the scope of the right to discipline, and the range of disciplinary methods and prohibited disciplinary behaviors. However, it is still not properly integrated with the core logic of Chinese primary and secondary schools, which is centered on "school

rules", and parents' reporting behavior still infringes on teachers' reasonable and legitimate right to discipline.

The author compares the laws and regulations related to the right to discipline in education in China, Japan and South Korea, learns from the experience of Japan and South Korea, explores the similarities and differences of the policies on the right to discipline in education in different socio-cultural backgrounds in the East Asian Cultural Circle, identifies the problems and similarities, and puts forward the suggestions to optimize the policies related to the right to discipline in education.

2. Current Situation in China and Classification of the Causes of the Problem

2.1. Abuse of Disciplinary Powers in Education

Influenced by China's long history of educational culture and the rapid but insufficient development of modern education, the abuse of the right to discipline in the process of educational practice and implementation is no longer a new problem, and there have been a large number of scholars discussing and researching this aspect. Chen Zupeng believes that the abuse of the teacher's disciplinary power will lead to student "silence" problem, in China continues to this day in the means of education, there is no lack of teacher authority as the kernel of the center of the educational power of the students with the "discipline" means of education, and in this case, the teacher In such cases, the teacher's power is alienated into disciplinary power or even educational violence, which does not allow students to distinguish between right and wrong, and which reduces students' freedom of learning and life, but in many cases they are not fully convinced, leading to the emergence of problems such as students' silence, loss of their freedom and creativity, and loss of interest in learning [1]. In the perspective of teacher power, Cai Jing and Tian Youyi's point of view points out that teacher power often appears to be the oppression of authority and confrontation with students. Power is regarded as authority, punishing and admonishing students severely, hurting students' psychology and making them submissive, inferior and fearful: or teacher power is turned into teachers' own self-interest, making students become the tools for realizing their own value of life, and the example of "model class" is a good proof that teaching activities are turned into the means of teachers' reputation, and students' personality development and self are oppressed to the point of disappearing by abusing teacher power. Examples such as the "model class" are a good example of turning teaching activities into a means for the teacher to gain fame and prestige, and suppressing students' individual development and ego to the point of disappearance by abusing the teacher's power [2]. And in Liu Dongmei's study, survey data were utilized to clearly find that because of the deviation of educational philosophy, weak legal awareness, and unclear understanding of corporal punishment, the phenomenon of corporal punishment of students in primary and secondary schools still exists universally: in the 903 valid questionnaires targeting the form and manner of teachers' right to discipline, 15.4% and 29.5% of the teachers chose to be punished for running and standing, and another considerable portion of the teachers would use disguised corporal punishment [3]. These have led to parental dissatisfaction with the educational disciplinary process towards teachers and are the triggers for malicious reporting behavior by parents.

2.2. The Phenomenon of "Non-use" of Disciplinary Powers in Education

Contrary to the abuse of the right to discipline, the problem of the lack of use of the right to discipline is also formed in the process of the rapid development of China's education concept and education level, and appears to be a complex situation that exists alongside the "abuse of the right to education". Liu Xiaowei believes that the right to discipline education is a necessary means of teacher education and management of students, but there is a "want to use dare not use" possibility, and from the legal theory that the right to discipline teachers is a kind of "power", "do not use In legal terms, teachers' disciplinary power is a "power", and "not using it" is a dereliction of duty on the part of the teacher [4]. Liu Mingping, Zhang Xiaohu through the investigation and analysis found that many teachers said that they or their colleagues have made the necessary disciplinary action against students

and received the blame of the school or public opinion, "fear of using" the right to discipline education has become a pathological social phenomenon [5].

2.3. Blurring of the Concept of Educational Discipline with Relevant Concepts

Whether it is social awareness or legal regulation, China has not yet had a relatively perfect set of regulations or social consensus on a clear distinction between the negative concepts of "corporal punishment" and "disguised corporal punishment" and the broad concepts of "punishment" and "punishment" that are violations of the law in educational discipline. "to be clearly distinguished from the negative concept of" corporal punishment "disguised corporal punishment" and the broad concept of" punishment" to be regulated or social consensus, resulting in the actual teaching practice "each has its own words". Zhang Li and Wang Guangqian pointed out the need to stipulate the typical means of discipline for primary and secondary school teachers, the specific criteria for corporal punishment in the law are vague, and there is a lack of specific criteria for the manner of educational discipline [6]. Wen Zhiqiang also pointed out that Chinese legislation lacks clear provisions on what constitutes corporal punishment, what constitutes disguised corporal punishment, and what constitutes the boundaries of educational discipline, and suggested that although there are relevant departmental regulations that have appeared on the term of educational discipline and its role, they are very limited, and that the validity and normativity of the regulations are not perfect in terms of legal norms.

2.4. Study on the Rules of Discipline in Primary and Secondary Education (Trial)

At present, the research on the Rules of Discipline in Primary and Secondary Education (Trial) has not been deepened, and there are fewer related analyses and discussions. Ye Yangyong in 2021 conducted an empirical research and analysis, through the questionnaire sampling survey concluded that parents and teachers reached a consensus on most of the educational discipline, but some of the educational disciplinary measures have differences of opinion in the conclusion [7].

In summary, research on educational discipline has focused on two relative aspects: the "misuse" and the "non-use" of disciplinary power.

The "abuse" and the "unused" aspects of the power of educational discipline. In terms of "abuse", scholars have discussed the definition of and distinction between corporal punishment and educational discipline, and have put forward many views and opinions. On the "not used" side, the objective causes of this situation have been investigated and discussed in many ways. The lack of clarity regarding the right to discipline in education has also been studied in some depth, but there are still shortcomings in the study of social awareness.

3. The Right to Educational Discipline in Japan and Korea

3.1. Japan

Japan and China belong to the same East Asian cultural circle, and at the same time are economically advanced and have developed their education systems earlier, so a comparison of the Japanese situation and the way it is handled can lead to many effective experiences and the discovery of shortcomings.

In Japan, the means and forms of educational discipline are stipulated in the School Education Law, the Regulations for the Implementation of the School Education Law, and other regulations. It is mentioned in the School Education Law that educational discipline must first be "educationally necessary", and secondly, the implementation of educational discipline must take into account not only the educational transition, but also the protection of the rights of the person concerned, taking into account the character of the person concerned, the development of his or her deep-absorption, and the extent of the misbehavior. It is also stipulated that the right to administer disciplinary action shall be exercised by the principal, and that the right to administer disciplinary action in the case of expulsion, suspension or reprimand shall be vested in the principal, while disciplinary action that does not normally involve a change in the status of the pupil shall be exercised by the instructor of the

pupil concerned and shall not be transferred to any other person. In addition, there is a scope of "de facto punishment" in Japan. "De facto discipline" refers to individual disciplinary measures such as reprimands, detentions, and individual work, etc. De facto discipline is within the scope of reasonable teachers' right to discipline if it does not cause physical pain to the student and does not exceed the scope of what is recognized by common sense in society. In terms of corporal punishment, Japan explicitly prohibits punishment that causes physical pain to students in Article 11 of the School Education Law and specifies several types of corporal punishment: (1) Preventing students from going to the toilet or keeping foreign students in the classroom beyond the mealtime is an act of corporal punishment; (2) Preventing students who are late from entering the classroom, even if it is for a short period of time, is not permitted at the compulsory school level; (3) Students may not be kicked out of the classroom during class because of Students are kicked out of the classroom for being lazy or disruptive; punishing students in the classroom is permissible based on the concept of the right to discipline, as long as the time and manner do not exceed common sense; (4) In order to give a warning to a student who has stolen or vandalized another person's belongings, the student may be retained in the classroom after school to the extent that it does not result in corporal punishment, provided that the parents are notified; (5) In the event of a theft incident, the person concerned and witnesses may be retained in the classroom after school for investigation, but the student may not be force students to write confessions and statements; (6) It is permissible to increase the number of times a student is on sweeping duty for reasons such as tardiness or laziness, but there must be no differentiation or excessive coercion.

Japanese scholars have pointed out that the blurring of the scope of a teacher's right to discipline, and the possibility that a teacher may be disciplined for "improper teaching" under certain circumstances without a mechanism for determining whether or not the conduct is justified or constitutes "improper teaching" if any, leaves room for subjective judgment on the part of the student who is being disciplined [8].

3.2. South Korea

Many incidents of infringement of teachers' rights have occurred in Korea in recent years, and this has given rapid impetus to the improvement of laws and a series of measures related to the right to discipline in education in Korea.

Prior to this, a certain degree of corporal punishment was permitted in Korea's Educational Relations Act. Article 18 (1) of the Korean Elementary and Secondary Education Act stipulates that school principals may take disciplinary measures in accordance with the needs of education, and in the case of educational needs, principals may impose disciplinary or other educational measures on students in accordance with laws and regulations. At the same time, the school principal shall use the disciplinary, admonition and other methods provided for in the school regulations, but shall not use the method of causing physical pain to the student by using tools or at the physical level. Article 31, paragraph 8, of the Enforcement Decree of the Elementary and Secondary Education Act of Korea stipulates that corporal punishment between the use of tools, the body, etc., that cause pain to the student's body is prohibited. In other words, only direct corporal punishment that inflicts pain on the body with the use of tools or the body, etc., is prohibited, while brief corporal punishment by means that do not touch the body is considered permissible. Although profile corporal punishment is not unlimited and must be in accordance with the law and school rules, the establishment of school rules is basically determined by the school, so the degree of profile punishment permitted in each school is ultimately determined by the school. This has led to incidents and phenomena such as abuse of corporal punishment and violation of students' human rights in the exercise of the right to discipline in education in the early years of Korea.

Since then, in order to improve the phenomenon of corporal punishment and to fully protect the human rights of students, Korea has gradually implemented the Student Human Rights Ordinance on a regional basis. Subsequently, violations of teachers' rights occurred and became progressively more intense. Firstly, as a legal regulation to protect the human rights of students, the Student Human

Rights Ordinance (SHRO) has only grabbed the human rights and power of students without any limitation, and secondly, Article 6, Chapter 2, Section 2 of the SHRO states that "Students have the right to be free from all physical and verbal violence, including corporal punishment, bullying, group bullying, and sexual violence." "Educational supervisors, principals and teaching staff must prevent all physical and verbal violence, including corporal punishment, bullying, group bullying and sexual violence." However, there are no clear boundaries for corporal punishment, verbal violence, etc., and the determination of corporal punishment and verbal violence depends largely on the subjective description of the student. Furthermore, Articles 47 and 49 state that "If a student's human rights have been violated or are likely to be violated, any person, including the student, may apply to the Student Human Rights Defender for redress." "Upon receipt of the application for relief under Article 47, the Student Human Rights Defender immediately conducts an investigation, and when it determines that there has been a violation of human rights or an act of discrimination, it may recommend the following to the perpetrator, the person concerned, or the Superintendent of Education: (1) Ending human rights violations against students; (2) Necessary remedial measures such as restoration of human rights; (3) Appropriate measures such as warnings, human rights education and disciplinary action against those responsible for human rights violations; (4) Necessary measures to prevent the recurrence of the same or similar violations of human rights.

These regulations make it possible for students to subjectively consider disciplinary complaints against teachers as human rights violations, and for teachers to be immediately investigated, warned, educated on human rights, and disciplined when they are found to have violated human rights, making it impossible for teachers to reasonably exercise their right to discipline in education.

The development of the right to discipline in Korea fully demonstrates that laws and regulations cannot be defined vaguely, nor can one law override another.

Kwon argues that it is the Human Rights Ordinance for Students that is the cause of teachers' loss of control over their students and their loss of the right to discipline them in education, and that human rights are a Western value that has been applied uncritically in Korean education as one of the causes of the problem [9]. In addition, some scholars advocate the reconstruction of educational relations centered on the subject of education, and propose a new vision to break the rigid discourse system and the contradictory educational relations based on the traditional educational ideology conflicting with the modern one in the Korean educational system where the human rights of the students and the rights of the teachers are in conflict at present, and make a new system and make a new change [10].

4. Comparison and Recommendations

By analyzing the content of China's Discipline in Elementary and Secondary Education, learning and extracting the research experience of previous scholars, and comparing the systems related to discipline in education in Japan and South Korea and the arguments of scholars from different cultural systems, the following conclusions can be drawn:

First, the lack of clarity in the definition of the right to discipline in education and related corporal punishment, disguised corporal punishment, punishment, etc. is a problem that prevents the reasonable exercise of discipline in education.

Whether it is China's "Rules for Discipline in Primary and Secondary Education" or Japan's "School Education Law" or South Korea's "Primary and Secondary Education Law", it can be seen that the right to discipline in education and the boundaries between corporal punishment and punishment must be clearly defined and differentiated, and that all the problems in the past of the infringement of the right to discipline in education or problems caused by the excessive right to discipline in education have all stemmed from the insufficiently perfect policy and legal provisions related to the right to discipline in education and the lack of clear distinction and clear positioning. The positioning of the right to discipline is not clear enough. From the example of Japan can see that the relevant provisions of Japan relative to the current China and South Korea is more perfect, not

only provides for corporal punishment, the fact that corporal punishment, and so on, but also clearly distinguish between a few specific explicitly for corporal punishment behavior, which the future of China's education and discipline related policies can play an inspiring role in the improvement and progress, while South Korea's example of the comparison shows that South Korea's education law is not a perfect provision of the law to suppress the conflict situation of another law. Suppression of another law in the case of conflict, will lead to a major conflict of issues, legislation must be rigorous, perfect, comprehensive, the relevant provisions must have a certain degree of independence and authority.

Second, policies relating to disciplinary action in education must be decided carefully, taking into account practical considerations.

As for the disciplinary policies of China, Japan and Korea, due to the long history of traditional education, the rapid development of modern thinking, social diversity, the accelerated process of globalization and other complex factors, modern policies related to educational discipline must take into account these factors, and at the same time, contact with parents, society and other parties to monitor and participate in the ongoing small-scale trial to find shortcomings and problems, to build a modern new system. It is not advisable to copy foreign ideas or stick to the old rules, but to establish its own educational disciplinary system with multi-party interaction and regulation in an independent situation, so as to avoid irreversible major problems that do not meet the uniqueness of the current society.

5. Conclusion

Through the study of the current situation of China's educational disciplinary power, it can be concluded that China's educational disciplinary power related policies have been close to those of the more developed countries through the development of educational disciplinary policies, and have begun to stipulate the specific methods and scope of educational discipline, but there is still a lack of detailed differentiation, and the phenomenon of the misuse and non-use of the right to educational discipline still exists, and more research is needed to put forward a more advanced solution to the problem of the misuse and non-use of the right to educational discipline. More research is needed to come up with more advanced solutions to the problem of abuse and non-use of the right to discipline in education. Comparing the examples of Japan and South Korea, it can be learned that the legislation must be improved according to the real situation, and the independence of the right to discipline in education must be paid attention to in order to ensure that the implementation of the relevant policies will not be affected. China's policy on the right to educational achievement can make more comprehensive progress by learning from the experiences of Japan and South Korea and combining them with China's current problems.

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