

# The Daily Star

Journalism Without Fear or Favour

## FORUM

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Ban on Corporal Punishment in Upholding Rule of Law

**ARAFAT HOSEN KHAN** outlines cases of corporal punishment, the laws to prevent it and actions taken against it.

It may be true that the law cannot make a man love me, but it can keep him from lynching me, and I think that's pretty important.

--**Martin Luther King, Jr.**

The Bangladesh High Court has ruled that corporal punishment violates children's constitutional rights. This is definitely a positive step forward.

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The incidences of corporal punishment in schools across the country are nothing new and the failure of the concerned authorities to comply with their statutory duties to investigate such allegations, or to prosecute and punish those responsible, and to ensure the security of children and their freedom from cruel, degrading and inhuman treatment and punishment while in school, in breach of their specific statutory duties as specified inter alia under the Regulations framed under Section 39(2)(XXIV) of the Intermediate and Secondary Education Ordinance 1961, and in violation of their fundamental rights as guaranteed under Articles 27, 31, 32 and 35.

Corporal punishment is defined as the deliberate infliction of pain as retribution for an offence, or for the purpose of disciplining or reforming a wrongdoer, or to deter attitudes or behaviour deemed unacceptable.

Corporal punishment can mainly be distinguished in two forms: Parental or domestic corporal punishment: Within the family typically, children punished by parents or guardians;

School corporal punishment: Within schools, when students are punished by teachers or school administrators.

The practice of corporal punishment was recorded as early as 10th century BC in Míshlê Shlomoh, (Solomon's Proverbs), and it was certainly present in classical civilisations, being used in Greece, Rome, and Egypt for both judicial and educational discipline. Most of the earlier civilisations used heavy punishments as the means to maintain discipline and justice in their kingdoms. Heavy punishments were given to the wrongdoers in public so as to discourage others from doing the same. It worked well and people were scared of their ruling powers and generally peace reigned in all these civilisations.



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But in the 18th century, when corporal punishment came to be confused with violence and brutality, the number of such punishments were reduced drastically. Then finally in the 20th century, corporal forms of punishment were totally abolished and banned in most areas of the world.

We now come to the 21st century, the century of terrorism, violence, brutality and killing of innocents, when we still want to resort to decent and supposedly civilised ways of punishing these inhuman crimes. We think it is inhuman to resort to any kind of harsh punishment.

Corporal punishment of children has very severe impacts on child development and growth. A report titled "Corporal Punishment in School in South Asia" published by UNICEF in 2001 states that corporal punishment inflicts psychological damage upon the child in addition to physical pain, and increases feelings of humiliation, anxiety, anger and vindictiveness in children. It has also been shown to reduce a child's sense of self worth and to increase his/her vulnerability to depression. Corporal punishment also results in permanent interference with children's education and may become a direct reason for children dropping out of school, as increased anxiety levels cause a loss of concentration and poor training. Children subjected to corporal punishment have also shown aversion to taking risks and being creative.

However, the good news is Bangladesh is now the 110th country to ban corporal punishment in schools and ensure that children are taught in an environment that fosters curiosity and confidence as well as a culture of peace and violence and this has taken place via a writ petition filed on 18.07.2010 in the public interest by two petitioners, BLAST and ASK, challenging the systematic failure of the state to take action to investigate serious allegations of corporal punishment in primary and secondary educational institutions and madrasas, or to prevent further such incidents.

The writ followed reports of 14 separate incidents between March to July 2010 of caning, beating and chaining of boys and girls by teachers, culminating in the suicide of a 10-year-old boy following a reported beating at school.


On 18.7.2010, the Hon'ble Court issued a Rule upon the Government and finally on January 13, 2011 the High Court Divisional bench comprising Justice Md Imman Ali and Justice Md Sheikh Hasan Arif delivered a judgment where they held that corporal punishment constitutes a clear violation of children's fundamental rights to life, liberty and freedom from cruel, inhuman and degrading treatment. It held that the Government had failed to take appropriate and adequate action to investigate or take either preventive or punitive action in specific incidents of corporal punishment against children in schools and madrasahs, including that involving the suicide of a 10-year-old boy, and others involving caning, beating, chaining by the legs, forcible cutting of

hair and confinement. The Court referred to the Government's obligations under national and international law, including Articles 27, 31, 32 and 35 of the Constitution, the Child Rights Convention and the International Covenant on Civil and Political Rights, to prohibit, prevent and prosecute such acts.

The Court also issued directives as appropriate on the concerned Ministries (Education, Primary and Mass Education, Home Affairs and Women and Children's Affairs) and Boards of Education (1) to disseminate and implement the final guidelines on prohibition of corporal punishment as framed by the Government; (2) to incorporate the imposition of corporal punishment into the definition of 'misconduct' applicable to teachers of government-run educational institutions under existing laws, including the Government Servants Discipline and Appeal Rules 1985, and to take appropriate action against teachers responsible for corporal punishment; (3) to ensure that inspections of schools and madrasas address whether complaints of corporal punishment have been made, investigations done, actions taken against those responsible, and/or any preventive measures adopted; (4) to ensure that inquiries into such allegations must be confidential and ensure security of the victim; (5) to provide teacher training on 'safe, effective and proportionate means to discipline children'; (6) to establish a High-level National Monitoring Committee with Secretaries of the concerned Ministries, and including an independent member with a track record in protecting human rights, to monitor actions taken in compliance with the Directives; (7) to establish district-level Monitoring Committees under the Deputy Commissioner, to monitor actions taken to comply with the directives; (8) to disseminate information through the national media, including private broadcasters, on corporal punishment as a wrong and human rights violation and (9) the Court also directed the Government and the High-level National Monitoring Committee to report to the Hon'ble Court regarding action taken in compliance with the Rule.

However, worries remain if we analyse the entire case more closely and think about whether this landmark judgment will actually protect children's rights.

The said writ petition was filed on the basis of continued and unchecked incidences of corporal punishment meted out to children in primary and secondary educational institutions, of which some of the most recent reports were published in national newspapers. When it was moved before the Hon'ble Court, the Court issued a rule upon the Government to report to the Court on whether due investigations were held and actions taken against the instances of corporal punishment. It would be good to mention that the Government and the Ministry of Education were really helpful and co-operative in the court proceedings in order to dispose of this matter effectively and positively. They had, in compliance with the Court's orders among others, issued a Circular dated 9.8.2010 prohibiting corporal punishment and requiring action to be taken by



teachers; sent a memo directing investigations into the incidents brought to the Court's attention; held an inter-ministerial Meeting on 29.8.2010 to frame Guidelines on corporal punishment.

Below are incidents of corporal punishment as reported in newspapers, and, in compliance with court orders, descriptions of investigation reports as well as the action taken against teachers who were responsible for corporal punishment:

	Educational Institution	Allegation	Inquiry /Investigation and Action
1	Munshipara Government Primary School, Dobaara Mymensingh	Anwar Hossain, 10-year-old boy, committed suicide on 14.07.2010 allegedly after being caned by his school teacher, who accused him of stealing money, as reported in the Daily Prothom Alo on 15.07.2010	Report of 28.10.10 by District Primary Education Officer stating that the teacher was suspended temporarily on 15.07.2010; departmental proceeding was started by issuing a show cause notice on 21.07.2010; the teacher submitted a reply on 22.08.2010 and a personal hearing was conducted on 14.09.2010; as the hearing was not satisfactory a departmental inquiry was commenced and is still ongoing. Departmental inquiry ongoing
2	Jummahat Darul Ulum Senior Madrasa, Kunaigach, Kurigram	Unnamed girl student hospitalized allegedly after being caned by her teacher for not saying her daily prayers, as reported in Daily Sangbad on 20.03.2010	Report on 02.09.2010 by Asst Inspector, Bangladesh Madrasa Education Board, District Office Rangpur, of inquiry held on 5.8.2010 finding the allegations were established that girl of Class 8 was caned on her waist for not saying prayers admitted to health complex for 8 days <b>father stated that they have no complaint against the teacher</b> medical costs borne by teacher and principal as family is poor <b>Temporary suspension later withdrawn as no complaint was pursued by parent/victim</b>
3	Baharbag Abid Ali Dakhil Madrasa, Sadar, Magura	A girl student of Class IX allegedly caned by her teacher, for not wearing required school dress for girls, as reported in the Daily Sangbad on 23.03.2010	Report on 25.08.2010 by Deputy Registrar (Admin) Bangladesh Madrasa Education Board, Dhaka that inquiry held on 22.8.2010 found allegations established that girl beaten for not wearing black burkha and white scarf when girl tried to defend herself against caning, teacher's ball pen went into her eye Assistant Superintendent accompanied her home and suggested not to proceed any further initially local medical treatment, then admitted to sadar hospital father filed case under Nari o Shishu Nirjaton Domon Ain final report given later settlement reached that victim would be admitted to vocational training school parent and victim had no further complaint teacher gave an undertaking that such an incident would not recur <b>Warning at 'shalishi boithok'</b> <b>Undertaking by teacher that incident will not recur</b>
4	Potajiya High School, Shahajahdpur, Sirajganj.	A school boy of Class IX allegedly severely caned by a teacher for 'misbehaviour' after he went to the girls' common room to call his younger sister, as reported in the Daily Shamakal on 24.03.2010.	Inquiry was made on 22.09.2010 and a report submitted on the same day by District Education Officer that allegations made out teacher stopped student from going up during girls' stipend distribution event, and when student behaved rudely teacher disciplined him and the student fell ill out of fright then he was sent to the nearest health centre and got better satisfactory settlement reached <b>Settled.</b>

	Educational Institution	Allegation	Inquiry /Investigation and Action
5	Mihus Sunna Jameya Arabia Madrasa, Bhashanchar Sadar, Faridpur.	A boy aged 6-7 years was allegedly chained by his legs for being 'indisciplined', as reported in the Daily Prothom Alo on 27.03.2010	Inquiry held and reported submitted on 06.10.2010 by District Education Officer that the parents (father a rickshaw puller and mother a domestic worker) had requested the mosque to chain the boy journalist assisted in returning child to parents - no mental torture had occurred <b>No action as no finding</b>
6	Sharwarjan Pilot Secondary School, Bamna, Barguna	A school boy aged 14 years of Class IX was admitted to hospital after allegedly being caned by his teacher for cheating in exams as reported in the Daily Shamakal on 26.04.2010.	Inquiry held on 16.09.2010 and a report submitted on 18.09.2010 by District Education Officer no such incident occurred as alleged in the newspaper according to Managing Committee Chair Adv Harunur Rashid and Principal but report notes that victim was not at inquiry but was represented by his son notice earlier circulated to prevent CP Press Club Chair and eminent persons all confirmed that the report was not true <b>No action as no finding</b>
7	Shekhorpara Nazrul Nagar Primary School, Shekhorpara Khulna Metropolitan City	A girl student of class IV was hospitalized after allegedly being beaten by her teacher for getting poor marks compared to other students in her class, as reported in the Daily Shamakal on 28.04.2010.	Report on 28.10.2010 by District Primary Education Officer that after a departmental inquiry, the teacher was found responsible for beating the student <b>Disciplinary Proceeding held under R2(f)(i) Govt Servants Discipline and Appeal Rules 1985</b> <b>Punishment awarded of reduction in timescale under R4(2)e) of Govt Servant Discipline and Appeal Rules 1985</b>
8	Birinchi Government Primary School, Feni Town	Twenty students, who went to their drawing class without colouring pencils were allegedly beaten so severely by their headmistress, that eight required hospitalization, as reported in the Daily Amar Desh on 09.03.2010.	Report on 31.3.2010 by District Primary Education Officer finding that on international women's day there was a shortage of teachers in the school as they had to observe the day, and the accused teacher was handling 3 classes at a time and in order to maintain discipline she had caned 10/12 students from Class III-IV. The said teacher was suspended temporarily and a departmental proceeding is now ongoing under Government Servants (Discipline and Appeal) Rules 1985 <b>Departmental inquiry ongoing</b>

	Educational Institution	Allegation	Inquiry /Investigation and Action
9	Modhugram Bahumukhi High School, Chagnalnaiyar Feni.	A girl student of Class VII was allegedly caned by a teacher, as reported in Daily Inqilab on 26.06.2010.	Inquiry held on 28.10.2010 and a report submitted on the same day by Deputy School Inspector, Comilla Board, which found the allegations to be established that child had been caned, but also noted that father and victim took no exception to the incident as there was no 'dishonest intention' <b>Comilla Board directed Chairman School Managing Committee to impose appropriate penalty against teacher on 26.11.2010 and inform Board, and also advised teachers not to assault teachers</b>
10	Islami Shikhkha Kendro Bandarban Sadar	A girl student aged 7 was hospitalized after alleged repeated beating for three days by a school teacher, as reported in the Daily Jugantor on 26.06.2010.	Inquiry held on 03.10.2010 and a report was submitted by District Education Officer finding the allegations established girl's mother had admitted her at age 4 as residential student due to poverty. Victim had brought mobile for a class 10 student at latter's request was later caned for this action by teacher then confined for three days in school and had her guardian informed was admitted to Sadar Hospital was given Taka 3000 from school and told teacher would be punished victim girl back in school <b>Teacher removed</b>
11	Chotul Government Primary School, Boalmari Upazilla Faridpur.	A girl student of Class V had a mental breakdown after allegedly being tied to a bench by a teacher, in the classroom, as reported in the Daily Sangbad on 30.06.2010.	<b>No Finding</b> <b>No Action</b>
12	Akandpara Dakhil Madrasa, Sarankhola Bagerhat	A boy student aged 13 years studying in Class VIII was hospitalised after allegedly being beaten by a teacher, as reported in the Daily Ittefaq on 03.07.2010.	Report submitted on 31.08.2010 by Asst Inspector, Madrasa Education Board, Regional Office, Khulna, re inquiry held on 24.08.2010 and findings of allegations being established girl students had made complaints regarding harassment by victim boy to the teachers and was showing a leaflet on STDs etc to the girls after seeing that the teacher hit the student; findings father and victim said that they had no complaints as medical costs were met, the <b>Managing Cttee, teachers and local people settled the matter before any inquiry could be held</b> <b>Medical costs of Tk-5000/- recovered from teacher.</b>



	Educational Institution	Allegation	Inquiry /Investigation and Action
13	Shamshernagar Government Primary School, Komolganj, Moulvibazaar	A girl student with disabilities of Class V was allegedly beaten by a teacher, for not contributing to a school fund, as reported in the Daily Sangbad on 04.07.2010.	Report of 30.10.2010 that investigation was conducted by the Upzilla Education Officer and also by the Police HQ, Both found allegations not made out, false report. <b>No action as no findings</b>
14	Palashbari Madhyapara Non-governmental Primary School Municipal Area, Kurigram	Five girl students of Class IV were allegedly beaten by the headmistress, as reported in the Daily Sangbad on 10.07.2010	<b>NO REPORT</b>
15	Abdul Mannan Government High School, Konapara, Demra, Dhaka	A girl student of class V was subjected to corporal punishment as reported in the Janakantha dated 15.08.2010	<b>Warning</b> <b><u>Case filed by mother but settled Teacher temporarily suspended</u></b> <b><u>Criminal case lodged by the victim's parents.</u></b>
16	Motijheel Ideal School and College, Dhaka	15 students of class IV were forced to have their hair cut while laying their heads on a dustbin as reported in the daily Sangbad on 27.09.2010.	Inquiry held on 04.10.2010 and 05.10.2010 and a report was submitted on the same day where the inquiry committee found the allegations made out. <b>A warning was given by the Governing body of the school to the alleged teacher.</b>

On close examination of the above table, it becomes apparent that the victims' voices are absent and that the parents' concerns are emphasised. More surprisingly, most of the matters were disposed of by settlement by way of “shalish” or arbitration. How possible or effective is to establish rule of law under such circumstances, we may ask.

It is also noticeable that none of these forms of behaviour by children involve the commission of any kind of offence recognised by criminal law. While certain behaviours, for example, 'not paying attention' may well involve an offence for which a child may be disciplined, there is no law which authorises the imposition of caning, beating, being chained or confined or any other form of corporal punishment.


Not only that, the punishments meted out to children in educational institutions in the name of 'discipline or control' may themselves constitute criminal offences under existing laws including the Bangladesh Penal Code 1860 and the Children Act, 1974 as well as the Nari o Shishu Nirjaton Domon Ain (Bishesh Bidhan) Ain 2000 (as amended in 2003).

The settlement of these cases through arbitration instead of in court is unacceptable under the judicial system. If such practices continue by the concerned authorities, we will never have an effective judiciary and in turn rule of law will never be established in our country and we will not see the true light of democracy.

In order to have an effective judiciary and to establish rule of law, we all have to avoid interpreting the law. We all have to work together to enforce them -- vigorously, without regional bias or political slant. We all need to cultivate the intentions to do the right thing. But all the noble mentions of the aforesaid judgments, all the high-sounding writings about liberty and justice, are meaningless unless people, we, breathe meaning and force into them. For our liberties depend upon our respect for the judiciary.



MICHAEL DINO HENDERSON/GETTY IMAGES



The road ahead is full of difficulties and discomfort. But we should welcome the challenges and also we should welcome the opportunity that has been created by the judiciary and we all should pledge our best efforts. We want to see the establishment of freedom and our children growing up under the rule of law where their rights would be protected.

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