

LEGAL ANALYSIS

KEY FINDINGS AND PROTECTION GAPS

**PHYSICAL AND HUMILIATING
PUNISHMENT OF CHILDREN
IN BANGLADESH**

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LIST OF ACRONYMS AND ABBREVIATIONS

ASK Ain O Salish Kendra

BLAST Bangladesh Legal Aid Services and Trust

BLA Bangladesh Labour Act, 2006

CAT Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment

CRC Convention on the Rights of the Child

ICCPR International Covenant on Civil and Political Rights

PDEP Positive Discipline in Everyday Parenting

PHP Physical and Humiliating Punishment

UDHR Universal Declaration of Human Rights

UNCRC United Nation's Convention on the Rights of the Child

UNICEF United Nations Children's Fund

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INTRODUCTION

BACKGROUND

Physical and humiliating punishment is a deep-rooted social problem in Bangladesh. The purpose of the paper is to analyze the updated laws, rules, policies and other legal instruments and to suggest recommendations to ensure comprehensive legal framework to prevent physical and humiliating punishment on children. However, in 2019, Bangladesh Legal Aid and Services Trust “BLAST” conducted a research to assess the existing laws, gaps in the legal framework and suggested recommendation to overcome the gaps. Firstly, the paper will briefly discuss the findings of the previous research. Secondly, it will analysis the updated legal instruments on PHP in all settings to evaluate the current legal framework and propose recommendations based on the findings.

CONTEXT

Physical and humiliating punishment on children is a prevailing concern across Bangladesh. A study report is based on the Bangladesh Multiple Indicator Cluster Survey (MICS), conducted in 2019 by the Bangladesh Bureau of Statistics (BBS) revealed that 88.8% children (aged between 1-14 years) were subject to ‘violent discipline’ i.e children age 1-14 years who experienced any physical punishment and/or psychological aggression at least one form of psychological aggression or physical punishment by a by caregivers during the past month in Bangladesh.¹ PHP covers a broader spectrum than corporal punishment. PHP means ‘the wide array of disciplining methods used by adults towards children, which may include corporal or physical punishment, and the threat of it, as well as psychological punishment that belittles, scares or ridicules the child’.² There is

overwhelming evidence that PHP is associated with a range of mental health issues in children, youth and adults, including unhappiness, anxiety, depression, feelings of hopelessness, use of drugs and alcohol, and general psychological maladjustment.³ Also, it slows cognitive development and adversely affects academic achievement of children.⁴

RATIONAL OF THE STUDY

PHP remains to be a major challenge faced by children, especially girls. PHP is a common and socially accepted form of violence against children in Bangladesh. According to the Multiple Indicator Cluster Survey of 2019 (report published by UNICEF and Bangladesh Bureau of Statistics in December, 2015), 88.8 percent children (1-14 years) face psychological aggression or physical punishment.⁵ In most cases, children are punished by parents, teachers, employers and caregivers in the name of ‘discipline’. Furthermore, media reports suggest that children face extreme cases of corporal punishment in educational institutions (schools and madrasas). Large number of the child population are facing everyday violence in their own home, educational institutions and workplaces. There is overwhelming evidence that corporal punishment causes direct physical harm to children and impacts negatively affect in the short and long-term of their mental and physical and cognitive development.

In recent years, Bangladesh Government has taken some positive steps against corporal punishment. The Supreme Court of Bangladesh declared corporal punishment in educational institutions-to be “illegal and unconstitutional”.⁶ In compliance with this ruling, the Government of Bangladesh issued a

Circular prohibiting corporal punishment in educational institutions in 2011, and provide a guideline to address PHP in all educational institutions.⁷

Bangladesh Government has also undertaken a series of initiatives to develop a national agenda to address violence against children with an emphasis on addressing PHP, which includes the National Children Policy and enacting of the Children Act 2013. BLAST has commissioned a study on law and policy analysis to identify the gaps and challenges for ending corporal punishment against children at 2012. Based on this study a policy brief were developed subsequently on the same issue. Besides, BLAST is also advocating with all relevant stakeholders to reform the laws to address the legal gaps for criminalizing Physical and Humiliating Punishment towards Children and accordingly has developed a draft amendment proposal on Children Act, 2013. In the meantime, several legal and policy developments took place nationally on education and educational institutions as well as for management of child safe home.

Hence, BLAST want to commission this analysis of laws and policies adopted by the government in the time being which directly and indirectly impact on PHP. The study will complement the previous analysis as well as the further proposed Children Amendment Bill.

1.A. STUDY OVERVIEW

Bangladesh Legal Aid and Services Trust (BLAST) is implementing a project titled “Legal Reform for Ending Corporal Punishment” with support from Save the Children since 2012. The main objective of the project is to (i) advocate for legal reform so that Physical and Humiliating Punishment towards Children (PHP) in all settings is addressed by the law and (ii) promote Positive Discipline in Everyday

Parenting (PDEP) in order to reduce PHP by parents/caregivers. The project aims to achieve the above objectives by strengthening the capacity of Civil Society Organizations “CSOs” and empowering children and individuals. Building on this knowledge, the Law and Policy (relevant to PHP) Analysis Study maps the existing legal framework, identifies and makes suggestions on gaps in the existing framework, and provides deeper insight into the successful implementation and/or challenges of key laws, regulations, and policies to prevent physical and humiliating punishment (PHP) of children in Bangladesh.

The study identifies key leverage points for reducing/preventing physical and humiliating punishment (PHP) of children in Bangladesh. Three research questions guide the study:

1. What are the gaps in the legal framework and enforcement of laws relating PHP in Bangladesh as relevant to the different setting be it at home, school, work place, care center or elsewhere?
2. What current laws in Bangladesh aim to prevent physical and humiliating punishment (PHP) of children in Bangladesh, and identify areas for reform?
3. What is the applicability of these laws to prevent physical and humiliating punishment (PHP) of children in Bangladesh and make recommendations on improving regulation in this area?

To answer the research questions, the researcher will use a document review method to gain a holistic understanding of the topic and mitigate potential bias in each data source. This report includes findings only from the various laws and documents review. It includes a review of policies, legislation, reports, academic journal articles, white papers, and other online content to help answer the research questions.

2. DESK REVIEW METHODOLOGY

This desk review was led by research team. The desk research began with a review of existing laws and policies that impacts the PHP. To complement the policy review, the researcher reviewed additional relevant literature that included academic literature, gray literature, and research reports.

3. FINDINGS

The research team found many findings from the desk review to be relevant to multiple research questions. We have, therefore, grouped our findings by themes,

each of which encompasses multiple research questions. In this section, the findings are presented as outlined in Table 1.

Table 1: Structure of the “Findings” Section of this Law Review Report

Section	Theme	Research Question(s)
3.A.	Gaps in the Legal Framework (1) Overview of previous research (2) Overview of present research	1
3.B.	Barriers to Enforcement in different setting	2
3.C.	Recommendations for Future Interventions	3

3.A. GAPS IN THE LEGAL FRAMEWORK

(i) Overview of previous research

Over the last few years BLAST has given a considerable effort to prohibit and prevent PHP in Bangladesh. In 2010, in response to a writ petition filed by BLAST and ASK, the Ministry of Education published a circular prohibiting corporal punishment in educational institutions.⁸ The supreme court declared corporal punishment as unconstitutional in January 2011. Later in the year, to comply with the ruling Ministry of Education published a circular prohibiting corporal punishment in all educational institutions. The government also incorporate such prohibition in National Children Policy 2011, but the Children Act 2013 did neither prohibit nor addressed the elements of corporal punishment and or PHP specifically. Currently BLAST

is advocating to amend the Children Act, 2013 to address the PHP issue more preciously.

(ia) Constitutional Framework

Under the Bangladesh constitution, particularly under fundamental rights, PHP is prohibited. There are a number of articles, such as article 35(5) provides, no person can be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. Article 28(4) says, the state can make laws for the advancement of children, women and the backward sections of the community. Article 26 prescribes that any law which is inconsistent with the fundamental rights shall be void to the extent of such inconsistency. Therefore, the constitution prohibits cruel, inhuman and degrading punishment and if there is any law that is inconsistent with the provision the law shall be

void to the extent of inconsistency. Also, the state can enact laws to protect the children from PHP.

(ib) Commitments under International Legal Instruments

Bangladesh has ratified a number of international instruments that prohibits the use of PHP on children. Convention on the Rights of the Child (CRC), Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights (ICCPR), Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) are some of them. These instruments require Bangladesh to take appropriate measures, such as legislative, administrative, social and educational for implementation of the rights. CAT requires the state to ensure the victim receives appropriate redress, adequate compensation and rehabilitation when necessary.⁹

More specifically, Bangladesh, as a state party to the UN Convention on the Rights of the Child (CRC), is under an obligation to protect children from being subjected to any kind of torture, punishment, and any cruel or inhuman or humiliating behavior (Article 37) and physical violence (Article 19). The provisions state that the educational discipline system requires teaching to be consistent with the child's dignity and in harmony with the CRC (Article 28.2).

The UN Committee on the Rights of the Child defines 'corporal' or 'physical' punishment as: 'any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. It also recognizes punishments that affects a child's mental health for example belittling, humiliating,

denigrating, scapegoating, threatening, scaring or ridiculing the child.¹⁰

Furthermore, in the third Universal Periodic Review (UPR) in May 2018, 251 recommendations were made for Bangladesh, of which the government of Bangladesh accepted 178 and noted 73. Amongst them Bangladesh is committed to Enact legislation clearly prohibiting corporal punishment; combat violence against women and children and take action for their rights and also strengthen existing monitoring mechanisms to protect women and children from all forms of violence and exploitation.¹¹

(ic) Statutory Framework

BLAST Review found out some Acts, i.e., Railways Act 1890, Code of Criminal Procedure 1898, Prisons Act 1894, Whipping Act 1909, Borstal Schools Act 1928, Cantonments Pure Food Act 1966 impose whipping as a punishment or disciplinary measure.

The review also revealed that though there is no law that exclusively deals with PHP, some Acts can be used to cover the issues relating to PHP. For instance, under section 320 of Penal Code, 1890 a perpetrator may be punished for causing grievous hurt to a child. Grievous hurt includes emasculation, permanent privation of the sight of either eye or hearing of either ear, privation, destruction or permanent impairment of any member or joint etc., permanent disfiguration of the head or face, fracture of dislocation of a bone or tooth and any life endangering hurt etc. Domestic Violence (Prevention and Protection) Act, 2010 covers physical abuse, psychological abuse, sexual abuse or economic abuse

against a child with whom the victim shares a family relationship.¹² This Act covers a wide range of acts like bodily pain, harm, or danger to life, limb, or health or impair the health, ridicule, humiliation, insults or threats of any nature, harassment, etc.¹³ Apart from this, a perpetrator may be tried under section 70 of the Children Act 2013 for causing unnecessary suffering or injury by which the child's sight or hearing is damaged or injury to any limb or organ or causing mental derailment.

Government published a circular in 2010 declaring infliction of PHP will be considered as misconduct; this is only applicable for government servants. The paper also reviewed some Acts that define misconduct.¹⁴ The Government Servants (Conduct) Rules, 1979 provides that no Government servant shall indulge in willful abuse of office and such act will be considered as misconduct. The Government Servants (Discipline and Appeal) Rules, 1985 provides that flouting of Government orders, circulars and directives without any lawful cause shall constitute misconduct.¹⁵ The Rules introduces two kinds of penalties for misconduct. Minor penalties include censure, withholding promotion or increment, deduction of pay or gratuity and stoppage of or reduction in the time scale, while major penalties include reduction to a lower post or time scale, compulsory retirement, removal or dismissal from service.¹⁶

(ii) Overview of current research

The Children (Amendment) Act, 2018

Children Act 2013 was enacted in order to specifically deal with the issues related to children. It imposes certain obligations to protect the children from abuse. Section 70 states that 'any person having the custody, charge or care of any child [who] abuses, neglects, forsakes, abandons them as unprotected, uses them for personal service or exposes them in an obscene way and thereby causes unnecessary suffering or injury by which the child's sight or hearing is damaged or injury to any limb or organ or causing mental derailment, then he will be deemed to have committed an offence under this Act (unofficial translation)'. The section prescribes imprisonment for up to five years or a fine of up to one lakh taka or both. Assaults, ill-treats, neglects and other cruelties to the Children are covered in section 70 but it is not adequate in terms of protecting a child against physical or humiliating punishment. The section should explicitly prohibit physical, cruel, psychological and humiliating punishment to children and acknowledge it as a punishable offence. It shall also incorporate a list of acts that constitutes PHP. For example, hitting a child by using hands or other things, throwing duster or choke at students, pulling hair, etc.

Key Findings of the legal analysis in the lens of PHP

1. Although the aim of the Children Act 2013 is to exclusively deal with the issues relating to children in line with the Bangladesh Constitution, provisions of international instruments such as the UNCRC, as well as decisions of the Bangladesh Supreme Court, the Act contains no provision that specifically addresses PHP.
2. The Act focuses more on children who commit a crime rather than protecting children against various offences.
3. Assaults, ill-treats, neglects and other cruelties to the children are covered in section 70 but it does not cover PHP and inadequate in terms of protecting a child against physical or humiliating punishment.
4. PHP on children is a deep rooted social ill. Victims of PHP do not receive redress as majority of the people inflict it on children for disciplinary purposes. Thus, the right to redress should be guaranteed by law particularly the Children Act, 2013.
5. The Act should recognize PHP as a crime and adapt a preventive approach to mitigate the issue.

Bangladesh Rehabilitation Council Act, 2018

One of the prime reasons for enacting the Act is to determine the standard of service of the rehabilitation institutes but the Act fails to prohibit PHP in rehabilitation institutions. However, Section 6 imposes a duty on the rehabilitation council to determine a standard of professional

conduct and to ensure that the standard is maintained. Also, the Act prescribes that code of conduct for the rehabilitation professionals can be made through regulations.¹⁷ Under these sections' regulations should be made prohibiting PHP and prescribe punishment for inflicting PHP. More specifically, obligations should be imposed on the rehabilitation professionals by incorporating provision in the Bangladesh Rehabilitation Council Act, 2018 to take effective steps to prevent physical and humiliating punishment (PHP) of children in rehabilitation institutions.

Bangladesh Madrasa Education Board Service Rules, 2006

Despite the numerous incidents of PHP in madrasas, the Rule does not recognize physical and humiliating punishment of Madrasa students as misconduct. However, as per the 2010 government circular infliction of PHP on students will be considered as misconduct. The Rule defines misconduct as not complying with the service rules and not obeying the lawful order of higher authority. As per the Rule misconduct maybe punishable with minor or major punishment. Minor punishment includes humiliation, suspension of increase in wages and services, and deduction of 7-day basic wages. Major punishment includes demotion in post or wages, forceful retirement and dismissal. In line with the above Govt. circular, this Rule, infliction of physical or mental punishment on children should be incorporate and recognize as misconduct. Therefore, Ministry of Education should take steps to amend the Bangladesh Madrasa Education Board Service Rules, 2006 to prevent physical and humiliating punishment (PHP) of children in all Madrasas across the country.

Bangladesh Madrasa Education Board Act, 1984 and Bangladesh Madrasa Education

Board, Dhaka (Governing Body and Managing Committee) Rules, 2009

This Act and the Rule have no provision either to recognize physical and humiliating punishment (PHP) of children or to prevent physical and humiliating punishment (PHP) of children in Madrasha. Despite having a large number of incidents of corporal punishments in different Madrasahs in Bangladesh over the years, there has not been any initiative to address the issue of PHP in their rules and regulation. Therefore, an effective provision should be included in the Bangladesh Madrasa Education Board, Dhaka (Governing Body and Managing Committee) Rules, 2009 to address and prevent physical and humiliating punishment (PHP) of children in Madrasha institutions. In some cases, governing and managing body are empowered to determine code of conduct of the teachers and therefore, provision of prohibition of PHP should be incorporated in the Code of Conduct.

Child Home Management Guidelines, 2003

The guidelines suggest to ensure a better upbringing, maintenance and development of children up to the age 7 years who are abandoned by their families. Under the “Care and Maintenance” heading the guidelines prescribe to behave with the children humanely and suggests to behave in a manner that does not negatively impact on the dignity of a child. However, the guidelines do not explicitly prohibit the use of PHP on children. The guidelines shall explicitly prohibit PHP in child homes and formulate guidance for the care provider that explain how to take care of the children at the care home in a manner that the children would be free from any form of physical and humiliating punishment (PHP). The Ministry of Social Welfare shall immediately take steps to prohibit PHP as children residing in child

home are prone to PHP and also develop a system that will make the care provider responsible any incident of PHP and also monitor regularly that the children are not subject to any form of physical and humiliating punishment (PHP) during their stay at the child home.

The Rights and Protection of Persons with Disabilities Act, 2013 and Combined Special Education Rules Regarding Disability, 2019

In 2013, the Rights and Protection of the Persons with Disabilities Act, 2013 (“2013 Act”) came into force, repealing and replacing the Disability Welfare Act of 2001. The Act not only has a broader definition of the nature of disabilities but also sets out the rights of persons with disabilities in more detail covering the fundamental rights as well as the cultural, social, economic and political rights.

The Rights and Protection of the Persons with Disabilities Act, 2013 deals with those people who by born or due to extraneous intervention including occupational disease, workplace injury or accident, are suffering from any kind of disability mentioned in section 3 of the 2013 Act. The 2013 Act is envisioned to ensure educational, physical, social, financial and mental improvement of persons with disabilities and to support their effective participation in social, administrative and state activities by removing all sorts of discrimination. However, in this Act does not have any provision either to recognize physical and humiliating punishment (PHP) of children with disabilities or to prevent physical and humiliating punishment (PHP) of children with disabilities in any settings.

Thereafter, Ministry of Social Welfare in accordance and in compliance with the Rights and Protection of the Persons with Disabilities Act, 2013 made this Rule in order to ensure right to education to the

children with Neuro-Developmental Disabilities. This Rule considers physical punishment, any kind of abuse or negligence or criticism as misconduct.¹⁸ The offence is punishable with humiliation or suspension of increase in wages and services or payment of compensation to the victim or institution, demotion in post or wages, or forceful retirement or dismissal.

National Child Policy, 2011

One of the Fundamental Principles of National Child Policy, 2011 is to elimination of all forms of child abuse. The policy explicitly provides that all forms of physical and mental punishment in educational institutions shall be prohibited and a child friendly system of imparting lessons be introduced so that the children and the adolescents do not have any physical and mental injury. The policy suggests to take steps to ensure security and safety of the children against all forms of violence, and physical, mental and sexual abuses. The policy further recommends to make necessary legislations and provisions to materialize child rights as well as to introduce effective public awareness program to stop violence against children. The relevant ministries, such as Ministry of Women and Children Affairs and Ministry of Education shall take steps including amendment to existing laws, enactment of new legislation, adaptation child friendly education system, organization of awareness campaign, etc. to materialize the policy. In order to implement this policy fully an inter-ministerial coordination body comprising with Ministry of Women and Children Affairs and Ministry of Education should form to address the PHP issue and work jointly to prevent physical and humiliating punishment (PHP) of children in all setting across the country.

Daycare Center Act, 2021

The Act is made to ensure a standard of security and institutional care in day care centers. It requires the centers to ensure child's health safety, security and to create child friendly environment.¹⁹ Section 23 prescribes that infringement of the child's security will be considered as an offence and the liable person shall be punishable with up to 2 lack takas fine or two years punishment or with both. The Act criminalizes cruel act to children and prescribes imprisonment up to 2 months or fine up to 50 thousand takas or with both.²⁰ The problem with this Act is that it does not define cruel act or explicitly prohibits PHP. A provision should be incorporated in this Act that prescribes a list of acts that constitutes cruelty and infliction of PHP should be considered as a cruel act.

Combined Policy for Post-natal Child Care and Development, 2013

The policy suggest to take familial, social and legal measures for preventing all kind of abuse against children for their physical and mental development.²¹ It also suggest to create a child friendly society and to ensure safe familial and social environment.²² The policy further suggests that different ministries, such as Health and Family Welfare Ministry, Primary and Mass Education Ministry, Education Ministry, Social Welfare Ministry and different national and international organizations shall work together for the purposes of the policy. The Ministry of Women and Children shall lead the ministries and organizations.²³ In order to implement Combined Policy for Post-natal Child Care and Development, 2013, an inter-ministerial cooperation and coordination body should form immediately to address the issue of PHP of children in all settings as mentioned in the policy.

The Penal Code, 1860

Section 89 of the Penal Code 1860 states that “Nothing which is done in good faith for the benefit of a person under twelve years of age, or of unsound mind by or by consent, either express or implied, of the guardian or other person having lawful charge of that person, is an offence by reason of any harm which it may cause, or be intended by the doer to cause or be known by the doer to be likely to cause to that person....” This section provides scope to inflict PHP on children in the name of discipline. The provision should be amended or repealed to ensure there is no legal provision that can be construed for providing a legal defence for the use of PHP on children. However, Section 320 of the Code can be invoked to punish the perpetrator for inflicting severe physical punishment. The section considers eight kinds of hurt as grievous hurt, such as emasculation, permanent privation of the sight of either eye or hearing of either ear, privation, destruction or permanent impairment of any member or joint etc., permanent disfigurement of the head or face, fracture or dislocation of a bone or tooth and any life endangering hurt. If any child is victim of any of these forms of hurt, he/she can seek redress under section 320 of the Code.

Bangladesh Labour Act, 2006

Section 44 of the BLA provides that a child who has completed 12 (twelve) years of age, may be employed in such a light work which is not dangerous to his health and development or shall not interfere with his education. But the Act does not incorporate any provision that criminalize or prohibits PHP on children or adolescent workers at the work place. The Ministry of

Labour and Employment shall include a provision prohibiting use of physical and mental punishment on child workers in the Bangladesh Labour Act, 2006 as amended in 2018. The national and international NGOs and CSOs who are working for protecting child rights should take immediate steps to make recommendation for addressing the PHP issue in the workplace in the upcoming amendment initiation of Bangladesh Labour Act, 2006 as amended in 2018.

Government Servant (Discipline and Appeal) Rules, 2018

Section 2(b) of the Rule defines misconduct. According to the Rule ‘misconduct’ includes- (i) disobedience to lawful orders of superior officers; (ii) gross negligence of duty; (iii) flouting of Government orders, circulars and directives without any lawful cause; and (iv) submission of petitions before any authority containing wild, vexatious, false or frivolous accusation against a government servant; v) doing any order work that is considered as misconduct under any other law. Two kinds of penalties that may be imposed on government servants who, for instance, are guilty of misconduct: minor penalties (section 4(2)) (e.g., censure, withholding promotion or increment, deduction of pay or gratuity and stoppage of or reduction in the time scale) and major penalties 4(3) (reduction to a lower post or time scale, compulsory retirement, removal or dismissal from service). Therefore, any government officials may be liable under section 2(b)(v) for being involved of any physical and humiliating punishment (PHP) of children in any settings across the country.

3.B. BARRIERS TO LEGAL ENFORCEMENT TO PREVENT PHYSICAL AND HUMILIATING PUNISHMENT (PHP) OF CHILDREN IN BANGLADESH

Barriers to Enforcement

The social acceptance and normalization of corporal punishments blur our basic understanding of child abuse. It creates a sense of justification within the perpetrator and also the victim. It leads them to believe that the abuse has a greater disciplinary purpose, making the act to be justified, and non-deplorable. Such social comprehension makes it difficult to morally police the act itself, thereby creating a gap for the government to intervene with framed legislation, criminalizing, and penalizing the acts of child abuse.

Lack of Legal Recognition of PHP of children in Bangladesh as a Crime

The legal framework of Bangladesh does not recognize PHP as a crime and rather PHP of children is deeply rooted in social norms and culture. The common believe of the parents in Bangladesh is that using corporal punishment on children is a useful tool to bring discipline to the classroom. Parents considered it to be an effective way of ensuring their children's proper development, and they further thought that children will be derailed if parents do not use physical punishment to their children.²⁴ Under these circumstances, lack of legal recognition of PHP of children in Bangladesh as a crime make the case worst.

'Corporal punishment rooted in culture'

Experts say the practice of physical punishment of children is rooted in Bangladesh's culture. They also cited lack of social awareness and parents' ignorance as the reasons behind the normative support for corporal punishment. Speaking to the Dhaka

Tribune, noted educationist Rasheda K Chowdhury said: "There is a common belief among parents that educational institutions will make their children good human beings. And they think corporal punishment is a requirement for this. This concept has derived from our culture."²⁵

Disinclination to lodge complaint' against teacher, employer, parents

In the context of Bangladesh, teachers, parents and employers are holding a position of respect and therefore, this is very common practice by the students, children or employee are disinclination to lodge complaint' against teacher, employer, parents.

Capacity of Key Actors

Ministry of Women and Children, Ministry of Education, Ministry of Primary and Mass Education, Ministry of Social Welfare, Ministry of Home and Ministry of Labour and Employment are the key actors to prevent physical and humiliating punishment (PHP) of children in all setting across the country. However, there is no visible coordination and cooperation amongst these ministries to tackle the issue of PHP. Therefore, one ministry alone does not have the capacity to address the PHP issue in all setting holistically. Therefore, a combined effort of all ministries mentioned above together can build a greater capacity to prevent physical and humiliating punishment (PHP) of children in all settings in Bangladesh.

3.C. RECOMMENDATIONS

At the end of the legal analysis on the current laws, rules and policies relevant to PHP of children, the researcher identified some recommendations for different ministries and NGOs or other change agents for shifting the enabling environment against children in all setting who are being subject to PHP:

Advocate for legislative reform. The legal review revealed key gaps in the legal framework. In particular, few laws and policies explicitly acknowledge the lack of proper protection of children from being subject to PHP in different sector/settings. While changing laws is a lengthy and challenging process, if successful, legal reform is an important first step for reducing incidents of PHP of children nationwide. BLAST should partner with the Government of Bangladesh, civil society, and other national and international organizations who are working for protecting children rights to advocate for measures to address gaps in the legal framework identified above.

Build the capacity of different ministries.

Several ministries lack the resources, knowledge, and capacity to effectively enforce laws to prevent physical and humiliating punishment (PHP) of children in all setting nationwide. Capacity-building interventions – including trainings, technology provision, and financial assistance to the extent possible – can help bridge this gap, allowing agencies to more effectively fulfil their enforcement mandates.

Ministry of Law, Justice and Parliamentary Affairs

1. Amend the Children Act 2013 incorporating the following acts as PHP

- a) PHP on children is a fundamental aspect of children’s rights and therefore, it shall be incorporated in this Act. Considering the nature of the settings under which PHP occurs, BLAST suggests a preventive approach rather than a punitive approach to mitigate PHP. However, as Chapter 9 of the act deals with the children that come in contact with the law, it is more relevant to amend the chapter,

particularly Section 70 and incorporate provision inclusive to PHP.

- b) To prohibit the use of corporal and cruel, inhuman and degrading punishment to a child by any person, guardian or authority, caregiver, natural or legal or legitimate guardian or teacher, the proposed Amendment Bill suggests to separate both minor and major forms of acts that constitute PHP for discipline or disciplinary action or any other purpose in the following manner to introduce lenient and harder sentences :

Minor Forms of PHP

- To injure a child with his hand or anything
- To throw any object such as chalk, duster or something similar
- To cut a pinch or bite any part of the body
- To pull hair or twist a pencil by pressing it between the fingers
- To push by the neck or pull ears
- To make the child do sit-ups holding ears
- To make the child stand putting head under the chair or any other object
- To make the child stand on knees
- To make the child stand or lie down facing the sun
- To make indecent gestures or intimidates the child

Major forms of PHP

- To hit a child with the foot
- To throw blunt or sharp objects

- To flog or throw away
 - To cut the hair
 - To illegally detain the child in a place or controlling the normal movements of the child
 - To engage the child in any such activity which is prohibited under the labour law
 - To make indecent remarks about the parents, lineage, tribe, caste, religion, etc
 - To discriminate or take any action that causes adverse reaction on the child's mind
- c) Chapter Nine of the Children Act 2013 should be amended and prohibit physical, cruel, psychological and humiliating punishment to children and acknowledge it as a punishable offence under this chapter.
- d) The chapter shall incorporate a list of acts that constitutes PHP. For example, hitting a child by using hands or other things, throwing duster or choke at students, pulling hair, etc.
- e) It shall prescribe specific punishment for the commission of the offence, for instance, compulsory social welfare work and fine up to Taka 25,000 and adequate compensation of the affected child in the manner prescribed by the rules.
- f) Severe offences like throwing blunt or sharp objects, illegal detention of a child, or discrimination on the ground of race, religion, lineage etc may be punished with compulsory social welfare work and fine up to taka 50,000 and up to three-month imprisonment and adequate compensation of the affected child in the manner prescribed by the rules.

- II. *Repeal laws that provide for the infliction of PHP as punishment or disciplinary measures. For example, section 32 of the Code of Criminal Procedure, section 130(1) of the Railways Act, 1890, Section 53 of the Prisons Act, 1894, and Section 5 of the Whipping Act, 1909.*
- III. *Amend section 70 of the children Act, 2013 and incorporate a list of acts that constitutes PHP. Also, add a provision explicitly prohibiting the infliction of PHP on children.*
- IV. *Amend various laws and rules, for example Child Home Management Guidelines, 2003, Bangladesh Labour Act 2006, Day Care center Act 2021, Bangladesh Rehabilitation Council Act, 2018 to incorporate provision prohibiting PHP.*
- V. *The draft Education Bill should ban PHP and take immediate measures to enact the draft Education Act.*
- VI. *Amend the definition of misconduct under Government Servant (Discipline and Appeal) Rules, 2018, and Bangladesh Madrasa Education Board Service Rules, 2006 to consider infliction of PHP as misconduct.*

Ministry of Women and Children Affairs

1. In order to implement the National Child Policy, 2011 fully an inter-ministerial coordination body comprising with Ministry of Women and Children Affairs and Ministry of Education should form to address the PHP issue and work jointly to prevent physical and humiliating punishment (PHP) of children in all setting across the country.
2. Organize public awareness campaign to enlighten parents, teachers and caregivers on the negative impact of PHP on children's development.
3. Establish psycho-social counselling services for the victims of PHP.

4. Maintain and promote cooperation among the ministries and national and international organisations that work to prevent PHP.
5. Production and distribution of IEC materials on i.e. leaflet, placards billboard etc. and raising awareness among people about the adverse impact of PHP.

Ministry of Education and Ministry of Home Affairs

1. Establish a committee in each district to oversee and implement the rules/laws relating to PHP in educational institutions.
2. An effective provision should be included in the Bangladesh Madrasa Education Board, Dhaka (Governing Body and Managing Committee) Rules, 2009 to address and prevent physical and humiliating punishment (PHP) of children in Madrasha institutions.
3. Ministry of Education should take steps to amend the Bangladesh Madrasa Education Board Service Rules, 2006 to prevent physical and humiliating punishment (PHP) of children in all madrashaes across the country.

Ministry of Social Welfare:

1. Ministry of Social Welfare as also the host ministry of the Children Act and therefore, this ministry can take appropriate initiative to amend the Children Act as indicated above in the Ministry of Law, Justice and Parliamentary Affairs's Recommendations section.
2. The Ministry of Social Welfare shall immediately take steps to amend the Rights and Protection of the Persons with Disabilities Act, 2013 to add provisions to recognize and to prohibit PHP of children with disabilities.

3. Obligations should be imposed on the rehabilitation professionals by incorporating provision in the Bangladesh Rehabilitation Council Act, 2018 to take effective steps to prevent physical and humiliating punishment (PHP) of children in rehabilitation institutions.
4. Formulate guidance within the Child Home Management Guidelines, 2003 for the care provider that explain how to take care of the children at the care home in a manner that the children would be free from any form of physical and humiliating punishment (PHP).
5. The Ministry of Social Welfare shall immediately take steps to prohibit PHP as children residing in child home are prone to PHP and also develop a system that will make the care provider responsible any incident of PHP and also monitor regularly that the children are not subject to any form of physical and humiliating punishment (PHP) during their stay at the child home.
6. A provision should be incorporated in the Daycare Center Act, 2021 that prescribes a list of acts that constitutes cruelty and infliction of PHP should be considered as a cruel act.
7. In order to implement Combined Policy for Post-natal Child Care and Development, 2013, an inter-ministerial cooperation and coordination body should form immediately to address the issue of PHP of children in all settings as mentioned in the policy.

Ministry of Labour and Employment:

1. The Ministry of Labour and Employment shall add a provision prohibiting use of physical and mental punishment on child workers in the Bangladesh Labour Act, 2006 as amended in 2018.

Child Rights Organizations

1. The national and international NGOs and CSOs who are working for protecting child rights should take immediate steps to make recommendation for addressing the PHP issue in the workplace in the upcoming amendment initiation of Bangladesh Labour Act, 2006 as amended in 2018.
2. Advocate to enact or amend laws to prohibit PHP in all settings.
3. Work with ministries or relevant government and non-government organisation to create awareness against PHP and to prevent PHP in Bangladesh.
4. Oversee the PHP situation and file complaint with a police station when necessary and provide necessary support and guidance to the victim.

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- ¹ Progotir Pathey, Bangladesh: Multiple Indicator Cluster Survey 2019, Bangladesh Bureau of Statistics (BBS) and UNICEF, December, 2019 at p. 42. <https://www.unicef.org/bangladesh/media/3281/file/Bangladesh%202019%20MICS%20Report_English.pdf>
- ² Physical and Humiliating Punishment (PHP), Save the Children Resource Centre. <<https://resourcecentre.savethechildren.net/keyword/physical-and-humiliating-punishment-php>>
- ³ Durrant J & Ensom R, 2012, Physical punishment of children: lessons from 20 years of research, US National Library of Medicine National Institutes of Health, 184(12): 1373–1377
- ⁴ Ibid
- ⁵ Supra-1; Bangladesh sees sharp decline in child malnutrition, while violent disciplining of children rises, new survey reveals (unicef.org)
- ⁶ BLAST and ASK jointly filed a writ petition (No. 5684/2010) at the High Court Division of the Supreme Court of Bangladesh on July 18, 2010, seeking to stop the cruel, inhuman and degrading punishment inflicted on students by their teachers. On 13 January 2011, the High Court declared in its verdict that any kind of physical punishment in educational institutions, along with the cruel, inhuman and degrading treatment of children, is illegal. Furthermore, on 09 August 2010, the Ministry of Education issued a circular prohibiting physical and humiliating punishment of students in educational institutions, which was followed by the Ministry formulating a policy regarding this matter.
- ⁷ Ministry of Education Circular No. 37.031.004.02.00.134.2010-151, 21 April 2011
- ⁸ Circular No. 37.031.004.02.00.134.2010-451 issued by Ministry of Education dated 9 August 2010.
- ⁹ Article 14, Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)
- ¹⁰ UN Committee of the Rights of the Child, General Comment No 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts 19; 28, Para 2; and 37, inter alia. <www.refworld.org/docid/460bc7772.html>
- ¹¹ https://www.upr-info.org/sites/default/files/document/bangladesh/sesion_30_-_mayo_2018/bangladesh_2r.p.pdf Visited 07th September, 2021
- ¹² Section 3, Domestic Violence (Prevention and Protection) Act, 2010
- ¹³ Ibid
- ¹⁴ Section 27, The Government Servants (Conduct) Rules, 1979
- ¹⁵ Section 2(f), The Government Servants (Discipline and Appeal) Rules, 1985
- ¹⁶ Section 4, The Government Servants (Discipline and Appeal) Rules, 1985
- ¹⁷ Section 33(2), Bangladesh Rehabilitation Council Act, 2018
- ¹⁸ Rule 23(7), Combined Special Education Rules Regarding Disability 2019
- ¹⁹ Section 12(5), Daycare Center Act 2021
- ²⁰ Section 25, Daycare Center Act 2021
- ²¹ Combined policy for post-natal child care and development 2013, p. 6
- ²² Combined policy for post-natal child care and development 2013, p. 9
- ²³ Combined policy for post-natal child care and development 2013, P. 17.
- ²⁴ Finding of a survey conducted by the Bangladesh Legal Aid and Services Trust (BLAST) with supports from Save the Children (SCI) titled “Corporal Punishment on Children in Schools: Present Scenario and Preventive Responsibilities,” participated by a total of 126 people from both urban and rural areas in Dhaka and Chittagong. (<https://www.dhakatribune.com/opinion/special/2017/12/11/corporal-punishment-bangladesh-culture> visited on 07.09.2021)
- ²⁵ <https://www.dhakatribune.com/opinion/special/2017/12/11/corporal-punishment-bangladesh-culture> Visited on 06.08.2021

ANNEX A

Table A: List of Laws, Policies, and Documents Reviewed

No	Document Type	Document Name	Key Content / Findings
1	Law/Policy	Children (amendment) Act, 2018	<p>Finding:</p> <ol style="list-style-type: none"> 1. Focuses on sever physical and mental punishment/harm. 2. Does not specifically address PHP. <p>Recommendation:</p> <ol style="list-style-type: none"> 1. Need to incorporate provision to explicitly prohibit PHP. 2. Stipulate a list of acts that constitutes PHP.
2	Law/Policy	Bangladesh Rehabilitation Council Act, 2018	<p>Finding:</p> <ol style="list-style-type: none"> 1. The act does not prohibit PHP in rehabilitation education institutions. <p>Recommendation:</p> <ol style="list-style-type: none"> 1. Include provision to prohibit PHP.
3	Law/Policy	Bangladesh Madrasa Education Board, Dhaka (Governing Body and Managing Committee) Rules, 2009	<p>Finding:</p> <ol style="list-style-type: none"> 1. No provision found regarding PHP. 2. In some cases, governing and managing body empowered to determine code of conduct of the teachers. <p>Recommendation:</p> <ol style="list-style-type: none"> 1. The Code of Conduct should include prohibition of PHP
4	Law/Policy	Child Home Management Guidelines, 2003	<p>Finding:</p> <ol style="list-style-type: none"> 1. prescribe to behave humanely with children and suggests to behave in a manner that does not negatively impact on the dignity of a child. 2. Do not explicitly prohibit the use of PHP on children. <p>Recommendation:</p> <ol style="list-style-type: none"> 1. Shall explicitly prohibit PHP in child homes. 2. Ministry of Social Welfare shall immediately take steps to prohibit PHP in child home.

5	Law/Policy	Combined Special Education Rules Regarding Disability, 2019	<p>Finding:</p> <ol style="list-style-type: none"> 1. Consider physical punishment, any kind of abuse or negligence or criticism as misconduct.
6	Law/Policy	National Child Policy 2011	<p>Finding:</p> <ol style="list-style-type: none"> 1. Explicitly prohibits Physical and mental punishment in educational institutions. 2. Prescribes to introduce child friendly system for imparting lesson to protect the children and adolescents from physical and mental injury. 3. Prescribes to enact law to materialize child rights. <p>Recommendation:</p> <ol style="list-style-type: none"> 1. Incorporate provisions in existing acts prohibiting PHP. 2. Draft a detailed document explaining the ways to introduce child friendly education system and initiate a project for implementing it. 3. Enact law that specifically deals with PHP related issues
7	Law/Policy	Daycare Center Act, 2021	<p>Finding:</p> <ol style="list-style-type: none"> 1. Infringement of the child's security will be considered as an offence. 2. Criminalizes cruel act to children but does not define cruel act. <p>Recommendation:</p> <ol style="list-style-type: none"> 1. incorporate a list of acts that constitutes cruelty and infliction of PHP should be considered as a cruel act.
8	Law/Policy	Combined Policy for Post-natal Child Care and Development 2013	<p>Finding:</p> <ol style="list-style-type: none"> 1. Suggest to take familial, social and legal measures for preventing all kind of abuse against children for their physical and mental development.

9	Law/Policy	The Penal Code, 1860	<p>Finding:</p> <ol style="list-style-type: none"> 1. Article 89 of the Penal Code 1860 can be construed for providing a legal defence for the use of PHP. 2. Victims severe forms of hurt can seek redress under section 320 of the Code. <p>Recommendation:</p> <ol style="list-style-type: none"> 1. Repeal or amend section 89.
10	Law/Policy	Bangladesh Labour Act, 2006	<p>Finding:</p> <ol style="list-style-type: none"> 1. Does not incorporate any provision that criminalize or prohibits PHP on children or adolescent workers. <p>Recommendation:</p> <ol style="list-style-type: none"> 2. The Ministry of Labour shall add a provision prohibiting use of physical and mental punishment on child workers.
11	Law/Policy	Women and Children Repression Prevention Act, 2000	Not Applicable
12	Law/Policy	Bangladesh Madrasa Education Board Service Rules, 2006	<p>Finding:</p> <ol style="list-style-type: none"> 1. Does not recognize physical and humiliating punishment as misconduct. 2. Defines misconduct. <p>Recommendation</p> <ol style="list-style-type: none"> 1. Infliction of physical or mental punishment on children should be recognized as misconduct.
12	Law/Policy	Government Servant (Discipline and Appeal) Rules, 2018	<p>Finding:</p> <ol style="list-style-type: none"> 1. Defines misconduct <p>Recommendation:</p> <ol style="list-style-type: none"> 1. Include PHP in the list of misconduct.

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