



PHYSICAL AND HUMILIATING PUNISHMENT OF CHILDREN IN BANGLADESH

Key Findings and Protection Gaps



Save the Children
100 YEARS



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📍 1/1 Pioneer Road, Kakrail, Dhaka-1000, Bangladesh

☎ +88 (02) 8391970-2 ✉ mail@blast.org.bd

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Author

Taqbir Huda

Editor

Sara Hossain

Cover Photo

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Designer

Imran Hossan

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II. Background

Physical and humiliating punishment (PHP) of children remains a pressing concern across Bangladesh. This brief sets out key concerns regarding the continued practice of PHP, gaps in existing laws and policies, and strategies of response. It first draws on the findings of a recent baseline study supported by BLAST and Save the Children¹ which conducted household surveys with parents, caregivers and children in both rural and urban areas.² It then outlines the legal and policy framework, with a focus on PHP in the home and educational institutions. Based on this analysis, it proposes recommendations for action by all those concerned with ensuring children's rights: lawmakers, political parties and citizens' groups.

III. Context

According to a recent study, 82.3% children (aged between 1-14 years) were subject to 'violent discipline' i.e. at least one form of psychological aggression or physical punishment by a household member during the past month in Bangladesh.³ It remains common practice for parents, caregivers, teachers and employers to inflict PHP on children in the name of 'discipline'. 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'.⁴ It is thus broader than corporal or physical punishment. There is overwhelming evidence that PHP negatively impacts the mental, physical and cognitive development of children.

¹ Acred Foundation, Study Report: Baseline Study for the Programme "Stop Tolerating Violence Against Children (STVAC)" Save the Children and BLAST, January 2018.

² A total of 402 households were surveyed, out of which 171 had fathers as respondents, while 184 households had mothers as respondents and 47 households had respondents who were the caregivers of the children. Additionally, 5 Focus Group Discussions (FGDs) were held with both parents and children separately. The urban areas included Dhaka City Corporation (DCC), Chittagong City Corporation (CCC), Rajshahi City Corporation (RCC) while the rural areas included Shibgonj, Binodpur and Manakosha in Chapai Nawabganj District, Sreemangal and Kalighat Union in Moulvibazar District and Godagari and Deopara in Rajshahi District.

³ Progotir Pathay, Bangladesh: Multiple Indicator Cluster Survey 2012-2013, Bangladesh Bureau of Statistics (BBS) and UNICEF, March 2015 at p. 135.

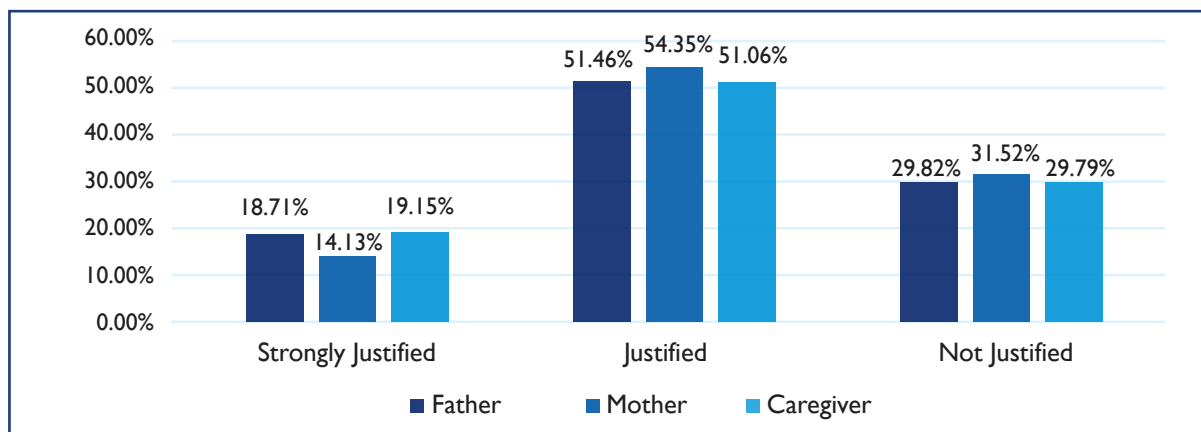
⁴ <http://mics.unicef.org/news_entries/15>

⁴ Physical and Humiliating Punishment (PHP), Save the Children Resource Centre. <<https://resourcecentre.savethechildren.net/keyword/physical-and-humiliating-punishment-php>>

IV. Key Findings from the Baseline Survey

A. Social Acceptance of PHP

Figure 1: Parents and Caregivers' Perceptions



As evident from Figure 1, the vast majority i.e. 69.67% of parents and care-givers think it is either justifiable or strongly justifiable to punish a child.

Figure 2: Types of Punishment Deemed Acceptable by Parents and Caregivers

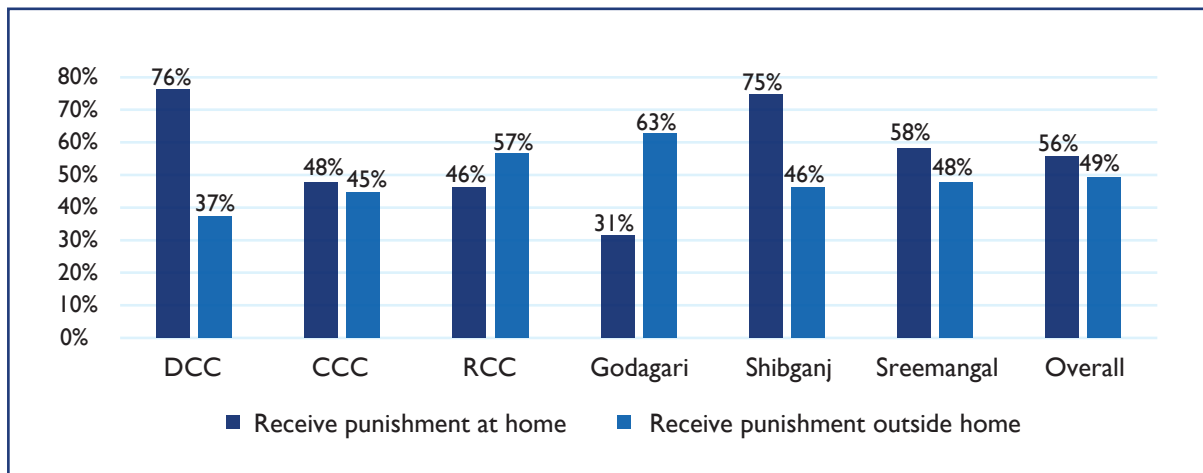
| Type of Punishment | Acceptability |
|--|---------------|
| Scolding | 94% |
| Slapping or Spanking | 68% |
| Threatening the Child with Severe Consequences | 41% |
| Yelling, Cursing or Insulting | 34% |
| Hitting with Stick | 26% |
| Making the Child Starve | 11% |
| Asking the Child to Leave Home | 4% |
| Pushing or Shoving | 1% |

Figure 2 shows the types of punishment parents and caregivers deem acceptable for children, most of which are physical or humiliating, and range from scolding (94%), slapping/spanking (no) and hitting with a stick (no). The most common forms of psychological punishment are threatening, yelling, cursing and insulting. While less common, others included inhumane practices such as starving a child or asking them to leave the house. More positively, about one third of parents and caregivers stated that it is not justified to punish a child (Figure 1).

However, some discrepancy was found when contrasting findings of Figure 2 to the actual punishment received as reported by children. For instance, 1% of parents/ caregivers mentioned pushing/ shoving as an acceptable punishment but 49% of children reported being pushed/ shoved. Similarly, while 11% parents and caregivers cited starving a child as acceptable punishment, 30% of the children reported being starved as punishment.

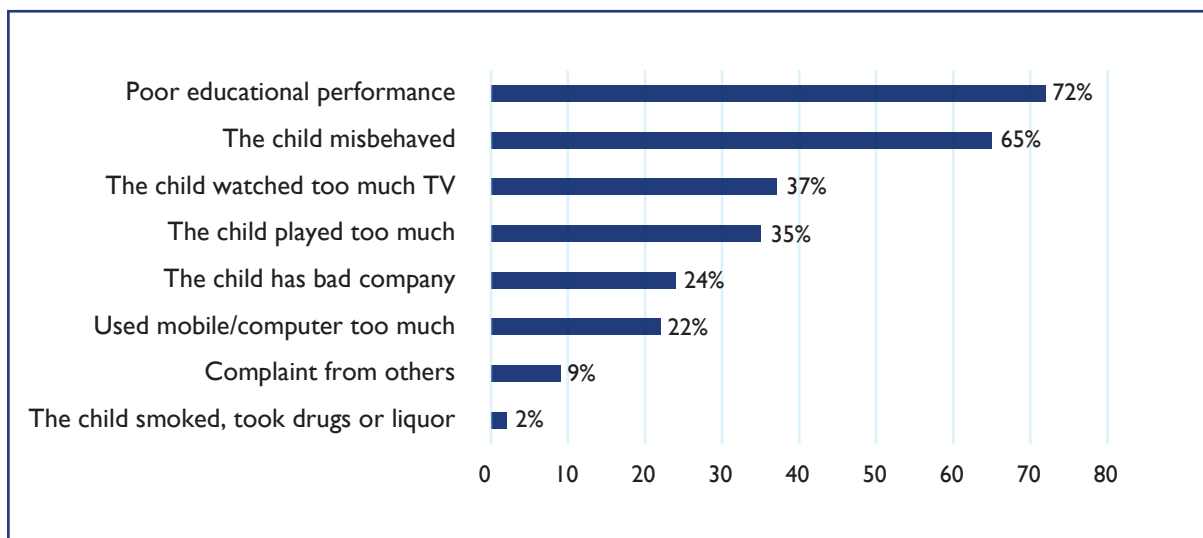
B. High Prevalence of PHP

Figure 3: Frequency of Punishment Reported by Children



Children were asked about how often they faced punishment (including those forms of punishment listed in Figure 2) at home and outside, such as in schools. Figure 3 shows that in response to this, overall 56% of children reported receiving punishment at home and 49% outside the home, such as in schools. Punishment in the home was the highest in areas within Dhaka City Corporation while punishment outside home was the highest in Rajshahi City Corporation.

Figure 4: Reasons for Punishing Child as Reported by Parents and Caregivers



When parents and caregivers were asked why they punished their children they most commonly said it was due to poor educational performance and/or misbehaviour (Figure 4). They also gave reasons such as excessive time spent watching television or mixing with 'bad company'. It is alarming that parents are resorting to PHP for matters that can easily be dealt with through alternative, more constructive forms of discipline.

Figure 5: Frequency of Physical Punishment Reported by Parents and Caregivers

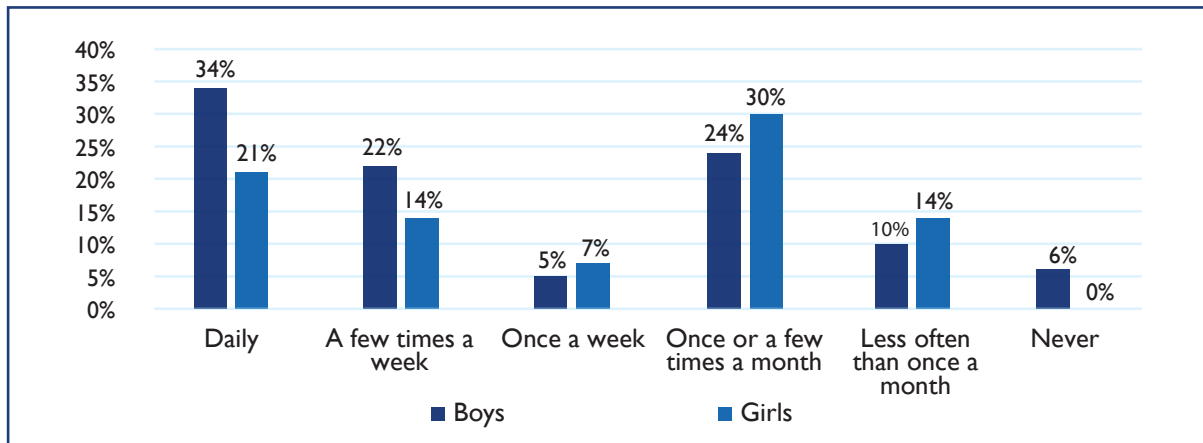


Figure 5 shows that when parents and caregivers were asked about how frequently they saw boys in their area being punished physically, 56% stated it was either daily or few times a week, while the rate was 35% for girls.

V. Legal and Policy Framework

In recent years, the Government has taken important steps to prevent PHP. In 2010, in response to a writ petition filed by BLAST and ASK, challenging the wide prevalence of PHP in schools, the Ministry of Education published a circular prohibiting corporal punishment in educational institutions.⁵ In January 2011, the High Court issued a judgment declaring corporal punishment in educational institutions, schools and madrasas, to be unconstitutional.⁶ In compliance with this ruling, the Ministry of Education issued guidelines prohibiting both physical and psychological punishments in April 2011.⁷ In the same year, the Government adopted the National Children Policy 2011 referencing the duty to prevent all forms of physical and mental punishment in educational institutions. In 2013, it adopted the new Children Act, (replacing the Children Act of 1974); although this does not specifically address PHP, it introduces some useful provisions.

In spite of these efforts, however, children continue to face PHP. To date there is no comprehensive law banning PHP in all settings, despite its widespread prevalence.

A. Constitutional Law

Table 1: Constitution of Bangladesh

| Article | Fundamental Right(s) |
|---------|--|
| 31 | Every individual has the right to enjoy the protection of the law, and to be treated only in accordance with law, wherever they may be. In particular no action detrimental to the life, liberty, body, reputation or property of any person can be taken except in accordance with law. |
| 32 | No person shall be deprived of life or personal liberty save in accordance with law. |
| 35 (5) | No person can be subjected to torture or to cruel, inhuman, or degrading punishment or treatment. |
| 35 (6) | Art. 35(5) does not affect the operation of any existing law which prescribes any punishment or procedure for trial. |
| 28 (4) | The State is required to make special provision in favor of women or children or for the advancement of any 'backward section' of citizens. |
| 26 (1) | Any existing law which is inconsistent with fundamental rights 'shall become void' on the commencement of the Constitution 'to the extent of such inconsistency'. |
| 26 (2) | The State shall not make any law inconsistent with fundamental rights and if any such law is made it 'shall, to the extent of such inconsistency, be void'. |
| 44 | Fundamental rights guaranteed by the Constitution can be enforced through application to the High Court Division. |

The Constitution guarantees certain fundamental rights (Table 1), many of which are implicated in cases where PHP continues without redress, and the State has a clear duty to prevent and penalise all acts of cruel, inhuman or degrading punishment under Article 35(5).

⁵ Circular No. 37.031.004.02.00.134.2010-451 issued by Ministry of Education dated 9 August 2010.

⁶ BLAST vs. Bangladesh, 63 DLR (2011) (HCD) 643.

⁷ Circular No. 37.031.004.02.00.134.2010-151 issued by Ministry of Education dated 21 April 2011.

B. International Law

Bangladesh has ratified various international human rights treaties that explicitly or implicitly prohibit the use of PHP against children. Under all of these Bangladesh is required to take ‘all appropriate legislative, administrative and other measures’ for effective implementation of the rights recognized under them.⁸

Table 2: Bangladesh’s Obligations under International Human Rights Law to Prevent PHP of Children

| Instrument | Relevant Provision(s) |
|--|---|
| Convention on the Rights of the Child (CRC) ⁹ | Article 19 obliges State parties to ‘take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child’. |
| | Article 28(2) obliges State parties to ‘take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention’. |
| | Article 37 obliges State parties to prevent the ‘torture, or other cruel, inhuman or degrading treatment or punishment’ of children. |
| | Article 39 obliges States Parties to take ‘all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of any form of... torture or any other form of cruel, inhuman or degrading treatment or punishment. |
| Universal Declaration of Human Rights (UDHR) | Article 5 obliges State Parties to ensure that no one is ‘subjected to torture or to cruel, inhuman or degrading treatment or punishment’. |
| International Covenant on Civil and Political Rights (ICCPR) ¹⁰ | Article 7 obliges State parties to ensure no one is ‘subjected to torture or to cruel, inhuman or degrading treatment or punishment’. |
| Convention against Torture, and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) ¹¹ | Article 1 defines torture as ‘any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as..punishing him for an act he or a third person has committed..when such pain or suffering is inflicted by..[a] person acting in an official capacity.’ |
| | Article 16 obliges State parties to prevent ‘other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by.. [a] person acting in an official capacity. |
| | Article 12 obliges State parties to ‘ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed.’ |
| | Article 13 obliges State parties to ensure that a victim of torture ‘has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities.’ |
| | Article 14 obliges State parties to ‘ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible.’ |

⁸ Article 4 of the CRC; Article 2 of ICCPR; Article 2 of the UNCAT.

⁹ Convention on the Rights of the Child. Ratified by Bangladesh in 1990. <www.ohchr.org/en/professionalinterest/pages/crc.aspx>

¹⁰ International Covenant on Civil and Political Rights. Ratified by Bangladesh in 2000. <www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

¹¹ Convention against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment. Ratified by Bangladesh in 1998. <www.ohchr.org/en/professionalinterest/pages/cat.aspx>

The UN Committee on the Rights of the Child defines ‘corporal’ or ‘physical’ punishment as:¹² ‘any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (‘smacking’, ‘slapping’, ‘spanking’) children, with the hand or with an instrument be it a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). In view of the Committee, corporal punishment is invariably degrading.’

It also recognised that there ‘are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention’ which may include for instance ‘punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child’.¹³

Therefore, while the Committee does not use the term PHP, its definition of ‘corporal punishment’ and explanation of ‘other, non-physical forms of punishment which are ‘cruel and degrading and thus incompatible with the Convention’ covers the range of punishments included in the term PHP.

¹² 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>

¹³ Ibid.

C. Domestic Law

i. Statutory Law

Despite the clear incompatibility of PHP with Bangladesh's Constitution and its obligations under international human rights treaties, several laws still sanction the use of PHP (see Table 3) such as whipping which can extend to children.

Table 3: Laws Allowing PHP in Bangladesh

| Instrument | Relevant Provision(s) |
|---|--|
| Railways Act, 1890 | Section 130(1) provides that for certain offences under the Act, a sentence of 'whipping' may be imposed on a male child under the age of 12 . |
| Code of Criminal Procedure, 1898 | Section 32 authorises Magistrates to impose a sentence of whipping . Sections 391-394 impose certain limits and conditions on the infliction of whipping as a sentence, prohibiting it on women, men aged over 45 years or anyone medically unfit to undergo the punishment. |
| Prisons Act, 1894 | Section 46(12) authorises whipping of male prisoners as a disciplinary measure. Section 53 extends it to boys under sixteen stating that it must be done 'in the way of school discipline'. |
| Whipping Act, 1909 | Sections 3 and 4 state that whipping may be given in lieu of or in addition to punishments specified in the Penal Code, 1860 for a wide range of crimes. This includes crimes committed by juvenile offenders under the age of sixteen (section 5). |
| Borstal Schools Act, 1928 | Section 4 extends the application of the Prisons Act, 1894 to a borstal school 'as if it were a prison and an inmate thereof a prisoner'. Thus, Section 46(12) and Section 53 above would apply to authorise whipping of boys in borstals. |
| Cantonments Pure Food Act, 1966 | Section 23(1) of the Act provides for imposition of whipping on anyone contravening the provisions of the Act. |

Table 4: Possible Redress for PHP under Existing Law

| Instrument | Relevant Provision(s) |
|--|--|
| Penal Code, 1890 | <p>Section 319 defines hurt as a person causing ‘bodily pain, disease or infirmity’ to another person.</p> <p>Section 321 states that a person who causes hurt with intention or knowledge of likelihood has voluntarily caused hurt.</p> <p>Section 320 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 disfiguration of the head or face, fracture or dislocation of a bone or tooth and any life endangering hurt.</p> <p>Section 323 provides that voluntarily causing hurt may result in a sentence of imprisonment of up to one year or a fine up to 1000 taka or both.</p> <p>Section 325 provides a sentence of imprisonment for upto seven years and a fine for voluntarily causing grievous hurt.</p> |
| The Government Servants (Conduct) Rules, 1979 | <p>Section 27 states that ‘No Government servant shall indulge in parochialism, favouritism, victimisation and wilful abuse of office.’</p> <p>Section 32 states that the contravention of any of the rules ‘shall be construed as misconduct..and [if] found guilty of such contravention shall render himself liable to disciplinary action’.</p> |
| The Government Servants (Discipline and Appeal) Rules, 1985 | <p>Section 2(f) defines ‘misconduct’ as ‘conduct prejudicial to good order or service discipline or contrary to any provision of the Government Servants (Conduct) Rules, 1979, or unbecoming of an officer or gentleman and includes-</p> <ul style="list-style-type: none"> (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; and <p>Section 2 (g) ‘penalty’ means a penalty which may be imposed under these rules.’</p> <p>Section 4 (read with Section 3) introduces two kinds of penalties that may be imposed on government servants who, for instance, are guilty of misconduct: minor penalties (e.g. censure, withholding promotion or increment, deduction of pay or gratuity and stoppage of or reduction in the time scale) and major penalties (reduction to a lower post or time scale, compulsory retirement, removal or dismissal from service).</p> |
| Domestic Violence (Prevention and Protection) Act, 2010 | <p>Section 3 defines domestic violence as ‘physical abuse, psychological abuse, sexual abuse or economic abuse against a woman or a child of a family by any other person of that family with whom victim is, or has been, in family relationship.’</p> <p>Section 3(a) defines physical abuse as ‘any act or conduct which is of such a nature as to cause bodily pain, harm, or danger to life, limb, or health or impair the health or development of the victim’</p> <p>Section 3(b) defines psychological abuse as that which ‘includes but is not limited to: (i) verbal abuse including insults, ridicule, humiliation, insults or threats of any nature; (ii) harassment; or (iii) controlling behaviour, such as restrictions on mobility, communication or self-expression.’</p> |
| Children Act, 2013 | <p>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. The penalty is imprisonment for up to five years or a fine of up to one lakh taka or both.’¹⁴</p> |

¹⁴ Unofficial translation of section 70, Children Act 2013 from ‘The Children Act 2013: A Commentary by Justice Imman Ali’, BLAST and Penal Reform International (2013) at p. 27.

While there is no law expressly banning PHP of children, any child victim may have recourse to a remedy under existing laws, both criminal and civil. This includes prosecution and punishment of the person responsible, and also certain protections, and compensation. As Table 4 illustrates, it is possible to redress victims of PHP under existing laws to a certain extent:

■ **Criminal Prosecution for Extreme Forms of PHP under the Penal Code 1890 and Children Act 2013**

The offences of voluntarily causing 'hurt' and 'grievous hurt' under Penal Code 1860 would only cover those forms of PHP which entail physical punishment and fall within their respective definitions (see Table 4). Therefore, the offence of hurt would cover those forms of PHP which cause 'bodily pain, disease or infirmity' of the child and grievous hurt would cover those which fall within one of the eight categories. Similarly, Section 70 of the Children Act 2013 would only cover PHP in a closed set of circumstances, i.e. those forms of PHP as a result of which the child's sight or hearing is damaged, limb or organ is injured, or mental derailment is caused. As seen in Figure 2, PHP takes various forms, only the most extreme forms of which would be covered by the categories included in the provisions of the 1890 Code and 2013 Act, thereby leaving many forms of PHP unaddressed.

■ **Penalties under Government Servants Rules for PHP in Educational Institutions**

Misconduct under the Government Servants (Conduct) Rules 1979 and The Government Servants (Discipline and Appeal) Rules 1985 can be broadly interpreted to cover PHP inflicted on children in educational institutions, as was accepted by the High Court in the BLAST case.¹⁵ However, the crucial limitation is that it would only cover public schools and not privately owned educational institutions as the rules only pertain to public servants. Crucially, the definition of 'misconduct' specifically includes 'flouting of Government orders, **circulars** and **directives** without any lawful cause', which therefore can be held to apply when public schools deliberately ignore the directives and guidelines of the High Court judgment and Ministry of Education circulars, which ban physical and psychological violence against children in educational institutions.

■ **Protection under Domestic Violence Act 2010 for PHP in the Home**

Additionally, domestic violence is defined broadly enough under the Domestic Violence Act 2010 to cover PHP inflicted on children by family members, be it physical or psychological abuse. The salient feature of the Act is its amalgamation of principles of criminal and civil justice and reconciliatory, rehabilitative and corrective measures, which seek to redress victims of domestic violence and reprimand its perpetrators while also seeking to preserve the institution of family.¹⁶ The Act empowers the Court to issue numerous remedies such as orders of protection, compensation, residence and custody. In order to avail the remedies under this Act, an application to the Court can be made by a victim or on their behalf, a police officer, an Enforcement Officer, a service provider or any other person.¹⁷ Crucially, it does not penalise the act of violence itself. It is only when orders are breached that punishment may be attracted. For instance, a breach of a protection order is an offence punishable by up to six months imprisonment or with a fine up to 10,000 Taka or both.¹⁸ The Act does not

¹⁵ Para 42.

¹⁶ Shahnaz Huda, *Five Years since Domestic Violence (Prevention and Protection) Act 2010: Is It Helping Survivors?* (2016), Plan International at pp. 33-34.

¹⁷ Section 11, Domestic Violence (Prevention and Protection) Act 2010.

¹⁸ Section 30, Domestic Violence (Prevention and Protection) Act 2010.

have any separate application process for child victims of domestic violence which factors in their heightened vulnerability. A child victim may seek protection under this law in case of punishment by a family member if another person files an application on their behalf. However, given the social acceptance and justification of PHP as an appropriate form of discipline whereby all if not most family members, especially both parents, agree to inflict PHP on children it remains unlikely for a third person to apply on behalf of the child in response to PHP. Further, as domestic violence is defined as being inflicted by a family member, it leaves out punishment by caregivers who are unrelated to the child, even if it occurs in the home.¹⁹

■ **Redress under The National Human Rights Commission Act 2009 (2009 Act)**

The 2009 Act established the Bangladesh National Human Rights Commission (NHRC) as a statutory body with the power to investigate allegations of human rights violations either suo motu or on the basis of a complaints filed to it. In the absence of a law which specifically deals with PHP, this complaint procedure can be relevant to the issue of addressing PHP. For instance, in November 2017 a teacher physically abused a class five student simply for being unable to answer a question leading to the child's hand being fractured. After the incident was reported in the news, BLAST filed a complaint to the NHRC requesting immediate action on the matter, after which the NHRC sent letters and notices to the District Commissioner (DC) and Upazila Nirbahi Officer (UNO) of Meherpur directing them to launch an investigation into the matter. As a result of the investigation, the teacher was found guilty and promptly dismissed from the institution while also being ordered to pay compensation of taka thirteen thousand to cover the costs of the child's treatment by way of mediation. A concern with the NHRC complaint procedure is the inordinate delay involved after the initial stage of filing the complaint and issuing notices to relevant DCs and UNOs. For instance, out of the 31 complaints filed by BLAST in 2018 to the NHRC (regarding PHP incidents in educational institutions as reported in the press), the NHRC issued letters requiring investigation from the relevant DC in 22 of them, while it is yet to respond to nine of the complaints. Out of the 22 complaints where investigation was directed, an investigation report has been submitted in only two, while one complaint was closed because a criminal case had been filed. Out of these two, one incident was found to be false and therefore the NHRC closed the proceedings,²⁰ while the other matter is pending a meeting between the complainant and the NHRC. Thus, an investigation report is yet to be submitted for the other nineteen cases.

Therefore, existing laws can be invoked to redress some forms of PHP faced by children: the Domestic Violence Act 2010 can address PHP in the home if inflicted by a family member, the Government Servant Rules 1979 and 1985 can deal with PHP in educational institutions, so long as they are state owned, while criminal prosecution under the Penal Code 1860 and Children Act 2013 would be applicable for extreme forms of PHP which results in serious injury, be it at home, school or elsewhere. However, there is very little evidence of these laws being used in practice to redress victims of PHP, perhaps because they do not specifically deal with PHP and are spread out across different Acts and Rules. For instance, making applications under the Right to Information Act, 2009, BLAST was able to find that in the period between January 2016 and December 2018, only seven cases under section 70 of the Children Act 2013 were filed in the trial courts of Dhaka, Faridpur

¹⁹ Section 11, Domestic Violence (Prevention and Protection) Act 2010.

²⁰ The alleged perpetrator in this happened to be the UNO of Rangamati thus it is questionable whether the investigation was politically motivated.

and Rajshahi combined.²¹ There is only one reported judgment under section 70 of the 2013 Act, which only deals with technical issue of granting bail while trial for the offence was still pending.²² The Domestic Violence Act 2010 is seldom used to redress any form of domestic violence (PHP or otherwise) and there are no reported judgments under the Act.

Notably, the government has drafted an Education Act, which imposes on the school administration and teachers, the duty to undertake general safety measures and create a safe environment and this includes protecting students from both physical and mental abuse.²³ Crucially, it specifically penalises the imposition of corporal or mental punishment on students and makes it punishable by three months' imprisonment or a fine of taka ten thousand.²⁴

So while some forms (usually the most extreme and physical) of PHP are covered by a range of different laws, these remain largely unused and there remains a dearth of any law which specifically and exhaustively deals with the issue of PHP, in spite of its high prevalence and the landmark 2011 judgment calling for it to be addressed, which we shall now turn to.

ii. High Court Judgment Prohibiting Corporal Punishment

On the social acceptability of corporal punishment:

*'Corporal punishment imposed upon children of all ages by parents and teachers is an every-day affair and has been going on through the ages. It can be said that the attitude of acceptance of corporal punishment as a norm has been handed down from generation to generation, as if by way of inheritance. So much so, that some adults/parents acquiesce to corporal punishment imposed upon their children as the only way to teach them and it is normal since they themselves were subjected to the same treatment.'*²⁵

In 2010, BLAST filed a public interest litigation against relevant Ministries, schools, madrasas and teachers in response to reported incidents of the rampant use of corporal punishment (e.g. caning, beating and chaining) on children in both governmental and non-governmental educational institutions across Bangladesh.²⁶ It also challenged the failure of the State authorities to investigate a series of reported allegations of corporal punishment of children in educational institutions, prosecute the perpetrators and provide redress to victims, thereby breaching their constitutional and statutory duties.²⁷

Following long hearings, the High Court issued a landmark judgment. The Court for the first time ever, defined corporal punishment, decried its prevalent practice, highlighted its ill-effects, and analysed the state authorities' obligations to prevent corporal punishment, identified laws which continued to allow corporal punishment and strongly noted the need for these to be repealed immediately given their conflict with the Constitution.

²¹ The RTI was filed before the Metropolitan Sessions Judge's Court in Dhaka and the District Judges' Courts in Dhaka, Faridpur and Rajshahi. It was also filed before the District Judge's Court in Chattogram which refused to provide any information without an order of the Supreme Court.

²² Abdul Kader Gazi vs. The State 69 DLR (2017) (HCD) 573.

²³ Section 6(a), Draft Education Act 2016.

²⁴ Section 24, Draft Education Act 2016.

²⁵ 63 DLR (2011) (HCD) 643, para 22.

²⁶ Ibid, para 1.

²⁷ Ibid.

On the prevalence of corporal punishment:

*'The existing laws of Bangladesh do not provide specifically for corporal punishment either in the home or in the educational institutions. However, a number of cases have been brought to our notice, which indicates that corporal punishment is pervasive in the homes, schools and work places.'*²⁸

On the harmful effects of corporal punishment:

*'Children become inattentive in their studies and in some cases they end up dropping out of school altogether. This obviously has **far reaching effects** on the child's development and future prospects in life. Moreover, we have seen in a number of cases that children have resorted to taking their own life. This undoubtedly is an unwanted and **avoidable** loss of human life.'*²⁹

Defining corporal punishment:

*'the voluntarily infliction of hurt upon a body of a person by the use of any implement such as cane, stick, ruler or any other object or by the use of hands, legs or any other parts of the body of the person inflicting the physical blow.'*³⁰

Drawing on the Child Rights Committee's General Comment, the Court defined corporal punishment and also recognised that there may be other, non-physical forms of punishment which are cruel and humiliating.³¹

On the importance of international legal obligations:

*'The national Courts **should not**, I feel, straightway **ignore** the international obligations, which a country undertakes. If the domestic laws are not clear enough or there is nothing therein the national Courts should draw upon the principles incorporated in the international instruments.'*³²

While the Court recognised that certain laws of the country allow corporal punishment to be implemented on offenders, it clarified that these did not 'relate to the school or home setting'.³³ Furthermore, it categorically rejected the assertion that section 89 of the Penal Code 1890 (which excludes certain acts done to children in 'good faith' from being

²⁸ Ibid, para 33.

²⁹ Ibid, para 30.

³⁰ Ibid, para 34.

³¹ Ibid.

³² Ibid, para 44.

offences) acts as a lawful defense for parents and teachers who use PHP on children ‘in good faith’ and called it an ‘erroneous argument’.³⁴ The Court profitably referred to the Constitution and the CRC, namely Article 28 of the Convention, to justify banning the use of corporal punishment on children in all settings.

Incompatibility of corporal punishment with the Child Rights Convention:

*‘We have no hesitation to hold that in the light of the [Child Rights] Convention corporal punishment upon the children **must be prohibited in all settings** including schools, homes and workplaces.’³⁵*

Even though much of the Court’s discussion on corporal punishment is specific to student-teacher relationships, when declaring the incompatibility of corporal punishment with the Child Rights Convention, it states the need to ban the practice in ‘all settings’, going beyond the student-teacher scenario, such as parent-child and caregiver-child relationships where PHP is also prevalent as per the findings above.³⁶ Furthermore, while the Court focuses more on the need to ban corporal punishment and not much on other forms of PHP, such as psychological aggression, the general tone of the judgment may well be interpreted purposively to extend its ban on corporal punishment to PHP as a whole.

Direction to repeal laws which allow corporal punishment:

*‘We are of the view that laws which allow corporal punishment, including whipping under the Penal Code, Code of Criminal Procedure, Railways Act, Cantonment Pure Food Act, Whipping Act, Suppression of Immoral Traffic Act, Children Rules, 1976 and any other law which provides for whipping or caning of children and any other persons, **should be repealed immediately** by appropriate legislation as being cruel and degrading punishment **contrary to the fundamental rights** guaranteed by the Constitution’.³⁷*

It directed the government to consider amending the Children Act 1974 so as to make corporal punishment upon children ‘within the home and workplace’ by ‘parents and employers’ a punishable offense.³⁸ As for corporal punishment in schools, it stated that the concerned authority ‘must take steps’ to treat it as ‘misconduct’ within the service rules for teachers so that ‘any teacher imposing corporal punishment on a pupil will be subjected to departmental proceedings for misconduct’, for which the law ‘must..be amended accordingly’.³⁹

³³ Ibid, para 33.

³⁴ Ibid, para 34.

³⁵ Ibid, para 45.

³⁶ Ibid, Para 49.

³⁷ Ibid Para 49.

³⁸ Ibid Para 48.

³⁹ Ibid, Para 28.

Circular issued by Ministry of Education (August 2010) ⁴⁰

- Prohibits all corporal punishment of pupils in all educational institutions, schools and madrasas.
- Treats imposition of corporal punishment as misconduct.
- Directs the District Education Officer and Upazila Secondary Education Officer to take effective steps to eliminate corporal punishment and to take appropriate action against the perpetrators of corporal punishment under the Penal Code, 1960, Children Act, 1974 and, where appropriate, to initiate departmental proceedings against them.
- Directs the Heads of Educational Institutions to take necessary steps to eliminate corporal punishment in their educational institutions.
- Directs the Managing Committee of schools to identify teachers who mete out corporal punishment and to take punitive action against them.
- Directs Inspectors under the Offices, Departments and Education Boards under the Ministry of Education to monitor imposition of corporal punishment when inspecting educational institutions and to submit reports with regard to it.

Guidelines issued by Ministry of Education (April 2011) ⁴¹

- Prohibits physical and mental punishment in all educational institutions.
- Defines **educational institutions** as both governmental and non-governmental schools and also madrasas.
- Defines **corporal punishment** as ‘any kind of physical assault of any student’ and includes examples:
 - To hit or cane any student by using hand/foot or any other thing
 - To throw any duster/chalk or any other material on any student
 - To punch or pinch
 - To bite any part of the body
 - To pull or cut hair
 - To insert a pencil between two fingers and to bend under pressure
 - To push or shove by the shoulder
 - To pull by the ears or make someone sit up and down
 - To make anyone stand or kneel by putting their head under a table/chair or anything else.
 - To make anyone stand or lie down in or to stand facing the sun.
 - To make any student do any act which is prohibited by the Labour Act.
- Defines **psychological punishment** as ‘any comment to any student in the classroom such as any obscene comment regarding his/her parents, family, caste, race, religion etc. making any indecent gesture of any behaviour that may create an untoward reaction into the mind of the student’.

⁴⁰ Circular No. 37.031.004.02.00.134.2010-451 issued by Ministry of Education dated 9 August 2010

⁴¹ Circular No. 37.031.004.02.00.134.2010-151 issued by Ministry of Education dated 21 April 2011.

- Considers any **‘direct or indirect’ involvement** in inflicting psychological or physical punishment on students as a contravention of Government Servants (Conduct) Rules, 1979 and a **punishable offence** against which penal action may be taken under criminal law and the Government Servant (Discipline and Appeal) Rules, 1985.
- States that the Government shall from time to time ‘amend/add or delete any provisions of these Guidelines as necessary’.

These circular and guidelines cover PHP of children in educational institutions only and do not at all address PHP on children in homes by parents and caregivers in spite of it being one of the most prevalent sources of PHP as per the findings above.

National Education Policy, 2010 ⁴¹

- One of the broad strategies of the Policy includes ensuring that teaching is conducted in a ‘pleasant environment characterised by love and care’ and further states that the ‘safety of the children will have to be ensured to resist any possible physical or mental tortures on them’. ⁴²
- Proposed solutions to school dropout rates include making the school environment ‘attractive and joyful’ by harnessing ‘warm interaction between teachers and students, caring and sympathetic attitudes of the teachers’. It further states that ‘physical punishment will have no place.’ ⁴³
- At the end, it lists special initiatives that need to be taken regardless of education level, one of which includes ensuring that ‘students, at any level of education, do not face any physical or mental torture.’ ⁴⁴

National Children Policy, 2011

- The ‘Child Education’ section of the Policy lists prohibition of physical and mental punishment in educational institutions as one of the issues where ‘specific plan shall be made and programs be implemented for ensuring and protecting the following rights of the children’: ⁴⁵

6.5.6 All forms of physical and psychological punishment in educational institutions shall be prohibited and a child friendly system of imparting lessons be introduced so that children and adolescents do not have any physical and mental injury.
- The ‘Implementation Strategies’ section of the Policy states that:

10.1 Ombudsman for the Children’ shall be appointed under legislation at the national level. For the monitoring implementation of UN convention and maintaining the child right welfare activity in National Action Plan, Ombudsman for the children shall play an important role.

⁴¹ Circular No. 37.031.004.02.00.134.2010-151 issued by Ministry of Education dated 21 April 2011.

⁴² National Education Policy 2010, Ministry of Education, Government of Bangladesh, p 4.

⁴³ Ibid, pp. 7-8.

⁴⁴ Ibid, pp. 71.

⁴⁵ National Children Policy 2011, p. 7.

VI. Recommendations

■ *Ministry of Law, Justice and Parliamentary Affairs*

- Repeal laws which still provide for the infliction of PHP on juvenile offenders, including but not limited to section 130(1) of the Railways Act, 1890, Section 53 of the Prisons Act, 1894, and Section 5 of the Whipping Act, 1909.
- Finalise and adopt the draft rules for Children Act 2013.
- Finalise and enact the draft Education Act and amend the prescribed punishment in section 24 for inflicting mental or physical punishment on students, so the imprisonment and fine can both be given in addition, rather than in exclusion, to one another. Additionally, include in this provision the granting of compensation as a remedy as of right to the victim children.
- Insert a provision in the Children Act 2013 which specifically and categorically prohibits the use of PHP on children in all settings, be it at home, in educational institutions or anywhere else, in line with the directives of the High Court and guidelines issued by the Ministry of Education. This provision must be worded broadly enough to cover all forms of PHP that the aforementioned studies have found children to be subjected to. When drafting this amendment, lawmakers should consider introducing corrective, rather than punitive measures for offenders of PHP when dealing with PHP inflicted by parents against their own children. Additionally, the law must include provisions that ensure redress for victims of PHP such as rehabilitation and compensation.

■ *Ministry of Women and Children Affairs*

- Finalise the establishment of a National Child Rights Commission (NCRC) as stipulated in the Children Policy 2011 (i.e. 'Ombudsman for the children') which shall specifically monitor the effective implementation of the UNCRC and Children Policy with a view to preventing PHP of children in all settings. The NCRC must also ensure effective complaints and investigative mechanism and redress for victims of PHP, including rehabilitation and compensation.
- Undertake public awareness campaign through media to sensitise parents, teachers and caregivers on the negative impact of PHP on children's cognitive development.
- Provide training for parents and caregivers on positive discipline through a national Positive Discipline in Everyday Parenting (PDEP) programme which reaches all over the country with a focus on low income communities.
- Establish psycho-social counselling services for children who face PHP from their parents, caregivers and teachers.

■ *Ministry of Education and Ministry of Home Affairs*

- Collaborate with the Bangladesh NHRC to set up PHP monitoring cells at the district level which are linked with the NHRC to ensure prevention of and accountability for PHP at educational institutions and require these cells to send quarterly progress reports to the NHRC, so the PHP situation is well documented at the district level.
- Establish and maintain a children's case tracking system which lists and monitors the progress of cases pertaining to violence against children.

Child Rights Organisations

- Continue advocating with the government for the speedy enactment of the Children Rules and Education Act and the establishment of the NCRC to prevent PHP in all settings.
- Undertake public awareness programmes to sensitise parents, teachers and caregivers on the negative impact of PHP on children's cognitive development through holding informal courtyard meetings, street theatre and social media campaigns.
- Undertake partnerships with relevant government departments to implement PDEP programmes.
- Monitor and document allegations of PHP and make complaints and referrals to seek investigation and response by the NHRC or law enforcement agencies as appropriate.

This brief highlights the main quantitative findings of a survey conducted with parents, children and teachers on the prevalence and effects of physical and humiliating punishment in different parts of Bangladesh. It also sets out the legal and policy framework relating to violence against children, analyses protection gaps and provides recommendations for reform. This brief will be useful for all those working to promote children's rights in Bangladesh, such as lawyers, activists and journalists.

BLAST

📍 1/1 Pioneer Road, Kakrail, Dhaka-1000, Bangladesh

☎ +88 (02) 8391970-2 ✉ mail@blast.org.bd 🌐 www.blast.org.bd

📄 [facebook.com/BLASTBangladesh](https://www.facebook.com/BLASTBangladesh)

BLAST Hotline: 01715220220
National Children Helpline: 1098
National Legal Aid Hotline: 16430