

(DRAFT)

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)

**WRIT PETITION NO.5684 OF 2010**

**IN THE MATTER OF:**

An application under Articles 44 and 102 of the Constitution of the People's Republic of Bangladesh.

**AND**

**IN THE MATTER OF:**

Bangladesh Legal Aid and Services Trust (BLAST),  
represented by its Deputy Director (Legal Aid),  
Farida Yeasmin and another .....Petitioners

**-VERSUS-**

Secretary, Ministry of Education, Bangladesh  
Secretariat, Dhaka and others ..... Respondents

**Ms. Sara Hossain**, Advocate with

**Ms. Aantee Nurul**, Advocate,

**Mr. Md. Taufiqul Islam**, Advocate &

**Mr. Mahjabin Rabbani**, Advocate

í .....For the petitioners

**Mr. Md. Mubarak Hossain**, Advocate

í í í .For the respondent No.15

**Mr. Kazi Mynul Hassan**, Advocate

í í .For the respondent No.16

**Mr. Md. Harun-or-Rashid**, Advocate

í í ..For the respondents No.21 and 35

**Mr. Md. Tashadduk Hasan**, Advocate

í í í .For the respondent No.37

**Mr. M. Wali-ul Islam**, Advocate

í í í For the respondent No.41

**Mr. Md. Motahar Hossain**, Deputy Attorney

General with **Mr. Samarendra Nath Biswas**,

Assistant Attorney General and **Mr. Md. Jahangir**

**Alam**, Assistant Attorney Generalí í í .For other

respondents

**Present:**

**Mr. Justice Md. Imman Ali**

*And*

**Mr. Justice Sheikh Hassan Arif**

Heard on: 05.01.2011, 06.01.2011,  
11.01.2011 & 12.01.2011

**Judgment on:13.01.2011**

**Md. Imman Ali,J.**

Children are the -apples of their parentsø eyesø All over the world,  
childless parents crave for them and the lucky ones who have children dote  
over them and yet it seems there comes a time when the parents impose all  
sorts of punishment upon their children either directly or indirectly, as will be  
apparent from the cases which have been brought to our notice in this petition.  
It is stated that young children have been subjected to -corporal punishmentø  
by educational institutions, which in some cases appear to be quite horrendous  
acts of violence administered in the name of discipline. It appears that towards

the beginning of 2010 there was a spate of newspaper reports concerning numerous cases of corporal punishment being meted out to children in various educational institutions, including Madrashas, Primary Schools and High Schools, and the children upon whom the corporal punishment had been inflicted were both boys and girls of various ages, as young as six years up to 13/14 year olds.

An application under article 102 of the Constitution was filed by Bangladesh Legal Aid and Services Trust (BLAST) and Ain o Salish Kendro (ASK), as a public interest litigation, impugning actions such as caning, beating and chaining of children, both boys and girls, studying in governmental and non-governmental primary and secondary educational institutions, including madrashas, in particular those reported in a series of reports published in national newspapers during 2010. Also impugned is the failure of the respondents to comply with their statutory and constitutional duties to investigate allegations of corporal punishment of children in educational institutions, involving cruel, humiliating and degrading punishments and to prosecute and punish those found responsible and also provide redress to those affected. Both the petitioners have a long established track record in undertaking public interest litigation for securing the rights of the most marginalised and discriminated persons of the community. Rule Nisi was issued on 18.07.2010 in the following terms:

Let a Rule Nisi be issued calling upon the respondents to show cause as to why;

i) the impugned actions being the alleged incidents of corporal punishment of children perpetrated by respondents No.31 to 43, as set out in Annexure-A series and the failure of the respondents No.1 to 16 to comply with their statutory and constitutional duties to take effective measures to prevent the imposition of corporal punishment of children in educational institutions including by the framing of necessary laws/guidelines, or to investigate such allegations, or to prosecute and punish those found responsible, should not be

declared to be without lawful authority or of no legal effect and/or unconstitutional being in violation of the fundamental rights guaranteed under Articles 27,31,32 and 35(5) of the Constitution respectively, and as to why-

ii) the respondents No.1 to 16 should not be directed to take immediate action to investigate the incidents detailed in Annexure-A series and to take appropriate actions against those responsible;

iii) the respondents No.1 to 16 should not be directed to take appropriate measures to-

a) provide a report to this Court on whether the instances of infliction of corporal punishment has been duly investigated and whether any action has been taken against the responsible persons;

b) provide training for all teachers through the Primary Teachers Training Institute on safe, effective, proportionate and humane means to discipline children;

c) to disseminate information through Bangladesh Television and Bangladesh Betar on corporal punishment as a crime;

d) to conduct regular inspection and monitoring of all educational institutions in particular with respect to the occurrence of any incidents of corporal punishment of children.

Pending hearing of the Rule, the respondents No.1 to 16, being high government officials of the Ministry of Education and other related Ministries and Education Boards, were directed to submit a report to this Court with regard to the measures taken by them to investigate, prosecute and punish those involved in the incidents of corporal punishment of children in governmental and non-governmental educational institutions, in particular those detailed in the annexures to the writ petition. The respondent No.1, Secretary, Ministry of Education was directed to immediately issue a circular to all to refrain from imposing any corporal punishment on any child in any educational institution.

A circular was issued by respondent No.1 on 09.08.2010 prohibiting all corporal punishment upon pupils in all educational institutions stating further

that imposition of corporal punishment would be treated as misconduct. The circular directed the District Education Officer and Upazila Secondary Education Officer to take effective steps to eliminate corporal punishment and also 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. The heads of educational institutions were directed to take necessary steps to eliminate corporal punishment in their respective educational institutions. The Managing Committee of the schools were directed to identify the teachers who mete out corporal punishment and to take punitive action against them. The circular further directed the Inspectors under the Offices, Departments and Education Boards under the Ministry of Education to monitor imposition of corporal punishment when inspecting the educational institutions and to submit a report with regard to it.

By an affidavit dated 18.08.2010 respondent No.1 supplied to this Court a copy of the aforementioned circular and also a direction upon the Director General (DG) of Secondary and Higher Education Directorate to inquire into the cases mentioned in the Rule and to report on an urgent basis. Also produced was a notice of a meeting to be held on 29.08.2010 with the view to drafting guidelines with regard to prevention of corporal punishment. On that very date, i.e. 18.08.2010, another newspaper item was brought to our notice with regard to a female student of Class-V being mercilessly beaten for laughing at another girl who had dropped her bag. This occurrence took place in a school in Demra, Dhaka not far from these Court premises. On the same day this Court passed an order directing the respondents No.1 to 7 to initiate immediate action to investigate the incident which had been brought to our notice on that date.

By an affidavit dated 05.09.2010, respondent No.1 annexed a copy of the minutes of the inter-ministerial meeting held on 29.08.2010 wherein a

committee was formed to formulate a training manual for teachers with the view to preventing corporal punishment. It was also resolved to formulate a draft guideline with the view to prohibiting corporal punishment upon students in educational institutions. It was also decided that the Primary and Mass Education Ministry should also issue a circular in a similar manner to the one issued by the Ministry of Education. It was also decided to produce mass publicity through the different media, namely Radio, Television, private TV Channels and the daily newspapers with regard to the prohibition of corporal punishment. In addition, UNICEF would be requested to produce leaflets and posters in this regard.

On 05.09.2010 the petitioner filed a supplementary affidavit with narration of inquiries which were taken on board by the petitioners themselves with regard to the incidents mentioned in the writ petition. On the same date this Court issued another direction upon respondents No.1 and 7 to investigate the matters raised in the earlier order dated 18.08.2010 and to submit a report.

On 27.09.2010 the respondents No.1 filed another affidavit in compliance stating that a departmental proceeding was started against the teacher concerned and that he had been arrested as a result of a case having been filed with the police and that investigations were ongoing.

Respondent No.16 filed an affidavit in compliance dated 26.09.2010 annexing a letter of the Bangladesh Madrasha Education Board dated 23.09.2010 addressed to the Chairmen of the respective Madrashes, who are respondents in this case directing them to take steps in the light of the Rule issued in this petition and to inform the Registrar of the Madrasha Education Board accordingly and to take action against the teachers in accordance with the Affiliated Non-government Madrasha Teachers Terms and Conditions of Service Regulations, 1979. This respondent further annexed a copy of the letter dated 05.10.2010 from the Chairman of the Bangladesh Madrasha Education

Board directing inquiries to be taken in the light of the allegations made in the writ petition.

On 26.09.2010 the petitioner filed a supplementary affidavit reporting yet another incident of corporal punishment which had taken place on 26.09.2010 in a school in Dhanmondi, Dhaka where a student of Class-IX was struck with a sandal in front of the class by the teacher, who was also Chairman of the School Committee, for not being able to do his Maths.

On 28.09.2010 the petitioners brought to our notice another incident of corporal punishment which took place on 27.09.2010 in one of the most renowned schools of Dhaka namely, Motijheel Ideal School. On the same date this Court passed an order directing the respondents No.1 to 4 to make inquiries into the allegation reported in the newspaper on 27.09.2010 and to intimate the findings to this Court within two weeks. This Court also suggested that this type of activity should be checked by the School Inspectors, and in particular, unannounced visits should be made randomly to all schools. It was suggested that the aim of the school inspection should not only be to oversee the educational achievement of the school, but also to ensure a proper, healthy conducive educational atmosphere in all schools.

On 25.10.2010 respondent No.1 submitted a supplementary affidavit in compliance annexing the draft guidelines on corporal punishment which was aimed at all educational institutions within the country giving details of what type of disciplinary action may be taken against the students and what action may not be taken against those students. We note that the guidelines do not specify whether any action is to be taken for indiscipline in the schools and what form those disciplinary actions should take. We note that paragraph-6 of the guidelines advocates taking action against the delinquent teacher under the Government Servants Conduct Rules, 1979 and Government Servants (Discipline and Appeal) Rules, 1985 and those who do not fall within those two laws may be prosecuted under the Children Act, 1974, Penal Code, Nari-o-

Shishu Nirjatan Daman Ain, 2000. However, we fail to see how any incident of corporal punishment inflicted upon a student in any educational institution attracts the provision of the Nari-o-Shishu Nirjatan Daman Ain, 2000. Respondent No.1 further produced the inquiry reports in respect of some of the incidents which were highlighted in the writ petition.

On 08.11.2010 the respondent No.16 filed an affidavit giving details of some action which has been taken in particular cases upon inquiry by the relevant officer.

On 09.11.2010 the respondent No.1 filed a further affidavit in compliance annexing the reports relating to some of the incidents of corporal punishment in the schools as mentioned in the writ petition. In addition a copy entitled *শিক্ষা প্রতিষ্ঠা-ন ছাত্র-ছাত্রী-দর শারীরিক ও মানসিক শাস্তি প্রদান নিষিদ্ধকরণ নীতিমালা, ২০১০* was annexed. This appears to be a more recent draft and was dated by the signatories on 31.10.2010. We received further affidavits in compliance by the respondents in relation to the various inquiries and investigations held in respect of the incidents, which have been kept with the record. We had the opportunity to hear from Mr. Md. Saiful Isalm, who is an Assistant Director (Law) of the Directorate of Secondary and Higher Education, who in the past had been a School Inspector under the Barisal Education Board. He very kindly gave us some important details about the set up of the various Ministries, Directorates and Boards concerned, giving details of various regional and local offices of the Ministries, namely Ministry of Education, which deals with Secondary, Higher Secondary and Higher Education; which has a Directorate of Secondary and Higher Education having under its control nine regional offices with 64 District Education Officers in 64 Districts and Upazila Secondary Education Officers in every Upazila. He then detailed the hierarchy within the Ministry of Primary and Mass Education which has a Directorate of Primary Education with six Deputy Directors in the six Divisions and there are 64 District Primary Education Officers (DPEO) and

Assistant Thana Education Officer (ATEO) in every Upazila. He told us that the ATEOs act as Inspectors. Then he gave us details regarding the Education Boards, which are autonomous bodies under the control of the Ministry of Education. There are nine Boards, of which three are in Dhaka, which deal with the examinations and curricula, namely for Secondary School Certificate (SSC), Higher Secondary Certificate (HSC) and now Junior School Certificate (JSC). He also told us that there is a College Inspector Section and School Inspector Section. The School Inspector Section having School Inspectors, Deputy School Inspectors and Assistant School Inspectors, who deal mainly with recognition of schools and whether or not they are to be given approval and also deal with academic standards. The Inspectors report to the Board, which then forwards the report to the Ministry. He then told us that the Madrasha Education Board is based in Dhaka and deals with Madrasha students from the equivalent of Class-V and above and has 9 regional offices. In addition there is the Ebtedayee Section which deals with students in classes equivalent to Class-I to IV. Finally, he told us that the service conditions of the teachers in the Secondary, Higher Secondary and Higher Education is covered by the regulations framed under the Intermediate and Secondary Education Ordinance 1961 and the service conditions of the teachers in the Primary Schools are regulated by the Government Service Rules and there are no separate laws or regulations in respect of Primary Schools.

Ms. Sara Hossain, learned advocate appearing on behalf of the petitioners, at the very outset, points out that there is no law that allows corporal punishment, but undoubtedly it is widely imposed in schools and madrashas across the country and there is systematic failure of the State to take action to investigate serious allegations of corporal punishment in primary and secondary educational institutions and madrashas. She submits that although, as a result of the Rule issued by this court, guidelines have been formulated in draft on more than one occasion, they are yet to be adopted. She further points



out that in the writ petition ten Education Boards have been made parties and yet only two responded to the Rule, and respondents No.5 and 6, who are relevant for the purposes of ascertaining details about the investigation, did not respond to the writ petition. She points out that although there are regulations relating to the Secondary and Higher Educational institutions in respect of discipline of the teachers, as contained in the Intermediate and Secondary Education Ordinance 1961 (the 1961 Ordinance) and the Madrasha Education Ordinance 1978 (the 1978 Ordinance), there is no provision within either ordinance with regard to discipline of students. Regulations framed in 1966 under section 39 (2) of the 1961 Ordinance provide for disciplinary action against the students of Secondary Schools, Intermediate Colleges and Intermediate Section of Degree Colleges. The Regulations provide that the initiative in taking disciplinary action and the award of punishment upon an individual student will remain with the Head of the Institution. But if mass punishment is considered necessary, the matter must be reported to the Chairman of the Board and his orders awaited. The forms of punishment prescribed include imposition of work set as punishment, detention, including extra drill, fines, suspension, expulsion and other punishment. The Regulations further provide that the punishment must never be in any way cruel; a punishment which will occupy a pupil in the open air will be more beneficial than a punishment which confines him in a classroom; when possible, the punishment should take the form of some useful occupation. Most importantly, it is provided that before a teacher turns to punishment he will naturally commence with remonstrance and reasoning and will show his disapproval. She submits that there is a separate ordinance for private schools published in year 1962, but there is no regulation regarding discipline within the school and, more importantly, there is no regulation dealing with the discipline within the Primary Schools.

Ms Hussain submits that many of the misdoings, for which children are subjected to corporal punishment, are not offences recognised by any law. The cases highlighted in the petition show that punishment has been meted out for not doing homework, failing to bring crayons to school, not saying prayers, having long hair etc. She submits that in fact the punishments which are meted out in the name of discipline or control often themselves constitute criminal offences under the Penal Code, 1860, the Children Act, 1974 as well as the Nari-o-Shishu Nirjatan Daman Ain, 2000.

With regard to the guidelines issued by the Ministry of Education, the learned advocate expresses her appreciation that the Ministry has taken prompt and firm action upon the Rule being issued by this Court in issuing a circular and subsequently drafting guidelines, but she points out that there is no mechanism in place to ensure that the guidelines are brought to the notice of each and every school and educational institution. She submits that the regulations, which were framed under section 39 of the 1961 Ordinance, could be amended in order to add a provision enabling the guidelines to be sent to each and every school and other educational institutions for immediate implementation.

The learned advocate points out that the concept of corporal punishment, and it being not permissible, is not apparent in the Ordinance 1961, but the regulations issued under section 39(2) of the East Pakistan Intermediate and Secondary Education Ordinance 1961 do contain certain provisions relating to indiscipline and misconduct of students and also provide for disciplinary action against students. She points out that evidently even in 1961 there was no provision for imposing corporal punishment on students, and, more importantly, she points out that the punishments detailed in the Regulations were to be used as a last resort; remonstrance being the primary form of punishment.

The learned advocate points out that it is commonly bandied out that the schools in Bangladesh impose corporal punishment which is provided by regulations, whereas the existing regulations do not indicate that corporal punishment may be imposed on children. She submits that this conception has permeated through to the committee of CRC and the misconception perhaps has arisen as a misinterpretation of section 89 of the Penal Code. However, she submits that section 89 of the Penal Code, as will be apparent from the explanation and illustration to that section, relates to doing some act particularly of medicare upon a child and it is purely a defence for those who give medicare to children and is in no way indicative of consent to impose corporal punishment upon children. The learned advocate submits that there are various departments under the Ministries both of Secondary and Higher Secondary Education as well as the Primary and Mass Education Ministry and also under the Education Boards, who use the service of Inspectors, whose services could be used to monitor the effectiveness of any guidelines and circulars relating to corporal punishment. She also points out that there is a District Development Co-ordination Committee which is chaired by the Deputy Commissioner and whose membership comprises other government officials as well as NGO workers. She submits that this committee may be used for the monitoring of the implementation of the guidelines and Rules and Regulations relating to corporal punishment. She points out that the children have their own rights as human beings and it is not permissible to apply any violence upon them, physical or otherwise, in order to instil discipline. She points out that any violence against another person, however minimal in nature, would be actionable under the criminal law, whereas violence against children in the name of discipline is not being taken seriously; no action is taken and there is no penal sanction. On the contrary, in the name of discipline, corporal punishment is accepted as the norm. She points out that the reports, which have been forwarded by the respondents, show that the incidents of

corporal punishment have effectively been brushed under the carpet. She points out that apparently the parents allegedly admit to have consented to the children being subjected to corporal punishment. This is an intolerable situation since it is not the parents, who suffered the indignity, humiliation, mental and physical harm and trauma, which is imposed upon the children. She submits that it is not up to the parents to consent or not to consent to the children receiving corporal punishment. She further points out that the incidents of corporal punishment, which appeared to have been settled at the level of local *salish*, is also not permissible, since they involve punishment for occurrences which are not criminal in nature. Where the teachers are palpably guilty of assault and sometimes grievous hurt, *salish* is not an appropriate mode of dispensation of justice. She refers to the decision in the case of ***Bangladesh Legal Aid and Services Trust and others vs. Government of Bangladesh and others***, in Writ Petition No.5863 of 2009. By judgment delivered on 08.07.2010, it was held essentially that the trial of any offence and imposition of penalties may only be done by established courts and tribunals and that traditional dispute resolution or alternate dispute resolution must take place in accordance with law and cannot involve the imposition of penalties for conduct not recognized as offence under Bangladesh law. It was further observed that "traditional dispute resolution processes through the *salish* for resolution of inter alia family disputes take place, but imposition of penalties, such as caning, whipping etc. or fine in such *salish* by a private person is bereft of any legal authority and is illegal." The learned advocate points out that the Hon'ble Judges further held that "imposition of extra-judicial punishment is beyond the Constitution and is punishable under the law. The Government shall take appropriate steps for creating awareness amongst people that imposition of extra-judicial punishment is impermissible in law and is, in fact, a crime." The learned advocate points out that the children in the cases mentioned in the writ petition were punished for such

minor indiscretion as having long hair, failure to do their home work, failure to bring crayons to school, failure to do prayers on time etc., none of which are criminal offences and yet they are being physically assaulted and injured to the extent that they need medical treatment and some are driven to depression and suicide. She submits that, although the psychological harm resulting from corporal punishment is not as easy to identify as physical injury, researches have been able to correlate corporal punishment with depression, loss of self-esteem and anxiety. In support of her contention, she makes reference to certain research material as mentioned in paragraph-7 of her affidavit dated 26.09.2010. She further submits that there is ample evidence that corporal punishment is injuring the children of Bangladesh through the physical pain it causes as well as subjecting them to severe permanent psychological damage and can interfere with making them well educated and productive members of the society as well as denying them their basic rights to freedom from violence. She also points out that no steps or action appears to have been taken to date by the Bangladesh Medical or Dental Council to provide any guidance on the issue of corporal punishment and its health impacts and implications on children.

Ms Sara Hossain then drew our attention to the laws regarding disciplinary action against school and madrasa teachers and to the extent to which these laws address corporal punishment. She submits that the respective Boards for secondary and higher secondary schools and madrasas have the authority to inspect their respective educational institutions with a view to granting or cancelling their membership/affiliation. In addition, it is provided that any person who contravenes any of the conditions of service shall be liable to disciplinary action including removal from his/her post. (See section 29 of the Madrasa Education Ordinance, 1978) However, imposition of corporal punishment is not specifically made an offence nor is it a ground for taking disciplinary action against the teacher. She points out that regulation 11 of the

Bangladesh Madrasha Education Board Governing Bodies and Managing Committees Regulations, 1979 provides that a teacher who commits a breach of the provisions of these regulations or who is guilty of negligence of duty, inefficiency or corruption or who knowingly does anything detrimental to the interests of the madrasha or is guilty of professional misconduct shall be liable to various punishments. What might amount to professional misconduct is also detailed by the regulation, but imposition of corporal punishment is not specifically mentioned. The learned advocate further points out that there are specific definitions of misconduct within the Government Servants Discipline and Appeal Rules 1985, but again imposition of corporal punishment is not listed as a professional misconduct. The learned advocate submits that the definition of professional misconduct should include imposition by teachers of corporal punishment upon students and should make them liable to sanctions/punishments.

Ms Hussain then mentioned that Bangladesh is obliged under international law to eliminate corporal punishment and to provide effective remedies for children. She submits that the fundamental guiding principles of international human rights law provide that every individual has a right to respect for his/her human dignity, physical integrity, and equal protection under the law. Bangladesh being a party to the Convention on the Rights of the Child (CRC), 1989, the International Covenant on Civil and Political Rights (ICCPR), 1966 and the Convention on the Prohibition of Torture and Other Forms of Cruel, Degrading and Unusual Treatment or Punishment, which specifically identify corporal punishment as degrading, physically harmful and constituting a denial to children of their protection from cruel and unusual punishment and equal protection under the law. She also points out that General Comment 8 to the CRC further establishes that all forms of corporal punishment are inconsistent with the CRC. She points out that the Committee on the Rights of the Child in its concluding observations on Bangladesh

periodic report in 2009 commented that the Committee remained concerned about the ineffective implementation of the existing laws to prevent corporal punishment and the existence of certain regulations in schools that permit forms of corporal punishment. It commented further that the Committee was concerned that although the Constitution prohibits cruel, inhuman or degrading treatment, children continue to be victims of corporal punishment and other forms of cruel and degrading treatment because of its acceptance in law and society. The Committee recommended certain measures to avert such situation.

Mr. Md. Motahar Hossain, the learned Deputy Attorney General appearing for the respondents in fact does not oppose the Rule and has provided us with reports of the inquiries which have taken place as well as reporting the activities of the Ministry from time to time keeping us abreast of all the developments. In essence, he is also not in favour of corporal punishment in the schools and madrashas. He points out that the circular and guidelines have been published and circulated in all the educational institutions throughout the country. He contends that the provision in the circular relating to the inclusion of imposition of corporal punishment as misconduct would require to be placed in the regulations by amending the Regulations of 1966. However, he submits that the publicity in the print media as well as in the electronic media as directed by the resolution of the committee (Annexure-6) has been complied with and the matter has been published abundantly in all the newspapers as well as over the radio and UNICEF has been requested to provide publicity material for television as well as for providing posters and leaflets to the public.

We have considered the submissions of the leaned advocates and perused the bundles of papers submitted by the parties. The contents of the writ petition and the additional affidavits filed by the parties have exposed the dark and sinister side of education in Bangladesh. The details of some of the incidents have stirred our conscience and left us feeling distraught at the

thought of parents allowing their children to be beaten and teachers mercilessly beating their pupils for small indiscretions. Most importantly, it is distressing to note that some of the incidents have led to fatality. Let us consider what is happening in the name of instilling discipline into children.

What is corporal punishment?

Generally, corporal punishment, i.e. punishment inflicted on the body, as a form of discipline, has been exercised across the world possibly from the first existence of family on earth. Corporal punishment includes hitting (õsmackingõ, õslappingõ, õspankingõ) children, with the hand or with an implement - 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 addition, there are other non-physical forms of punishment, including, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child. Parents rebuke and chastise their own children for all sorts of behaviour which is not to their liking. In fact children bear the brunt of so-called disciplinary action from everyone older in age or bigger in size. 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. Some go so far as to say that had it not been for the chastisement and punishment, we would not be what we are today.



As we have noted from the materials placed before us, the severity of the punishment ranges from verbal abuse/rebuke to physical violence by the use of the limbs or other implements varying in size, shape and degree of lethality. Conversely, the effect of the corporal punishment manifests in various forms and varies with the mental and physical state and stature of the child and can range from the not so visible psychological effect to the patent physical injury requiring hospitalisation and occasional death. Constant and prolonged rebuke can also lead to suicide of the child.

Article 19 of the Convention on the Rights of the Child (CRC) 1989 provides as follows:

19.1. States Parties shall 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.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

In this context, Article 28.2 of the CRC provides as follows:

28.2. "States Parties shall 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 of the CRC requires States to ensure that "no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment"

General Comment No.8 dated 02.03.2007 issued by the Committee of the CRC focuses on corporal punishment and other cruel or degrading forms of punishment with a view to highlight the obligation of all States parties to move quickly to prohibit and eliminate all corporal punishment and all other cruel or degrading forms of punishment of children and to outline the legislative and other awareness-raising and educational measures that States must take.

The Committee recognises that the practice of corporal punishment directly conflicts with the equal and inalienable rights of children to respect for their human dignity and physical integrity.

Article 35 of our Constitution deals broadly with protection of citizens in respect of trial and punishment. Clause (5) of article 35 provides that "no person shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment." Taken one step further, it should be obvious that if any person is protected from "torture or to cruel, inhuman or degrading punishment or treatment" after conviction of a criminal offence, then it stands to reason that a child shall not be subjected to such punishment for behaviour in school which cannot be termed criminal offence.

Information downloaded from the internet, as reported by Integrated Regional Information Networks (IRIN) on 3 November, 2009 referring to a study conducted by UNICEF, suggests that "most children in Bangladesh are regularly exposed to physical abuse at school, at home or where they work."

- "According to the report, 91% of the children surveyed faced various levels of physical abuse at school, while 74% were abused at home."
- "The threat of corporal punishment was a major reason why children played truant or had lost interest in their studies, the report said, adding that only 75% of enrolled students regularly attended school."

Of the children engaged in child labour, the report states that apart from having to put up with a heavy workload, poor wages and dangerous working conditions - a quarter of them were regularly beaten; 65% said they were punished in one form or another in their workplaces.

- At home the survey found that 99.3% of the children reported being verbally abused and threatened regularly by their parents. Slapping was a common form of discipline for 70% of the children, while 40% were regularly beaten or kicked.

#### Harmful effects of corporal punishment

There cannot be any doubt that corporal punishment is detrimental to children's well-being and has serious physical, psychological and emotional effects, as well as causing truancy and dropping out of school. This in turn exacerbates the cycle of illiteracy and poverty.

We commend the steps taken by the Ministry of Education in issuing the circular prohibiting corporal punishment in all educational institutions. We would strongly recommend that the awareness drive must continue. In addition the authority concerned must take steps to incorporate imposition of corporal punishment 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. The law must, therefore, be amended accordingly.

The authorities concerned must ensure that everyone coming into contact with children must realise that corporal punishment is harmful for the well-being of the children and, therefore, anyone contravening the prohibition is not only in breach of the terms and conditions of his service, but also may be liable to punishment under the existing criminal law.

The cases mentioned in the writ petition are indicative of the physical harm done to children who were subjected to corporal punishment. To our dismay, we note that in some cases the children did not even receive medical

treatment. Emotional harm is less easy to detect, as is psychological damage. Emotional and psychological damage manifest in the behaviour of children subsequent to being subjected to corporal punishment. When a child plays truant, it is obvious that going to school is distasteful to the child. He or she fears more 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.

Legal framework with regard to corporal punishment

The learned advocate for the petitioner brought to our notice one decision of the Delhi High Court in *Parents Forum for Meaningful Education and Another Vs. Union of India and another, AIR 2001 (Delhi) 212*. The case concerned Rule 37(1)(a)(ii) and (iv) of the Delhi School Education Rules, which empowered teachers to impose corporal punishment. Striking down the said Rule, a Division Bench of the Delhi High Court, after going through the national laws and the provisions of the Convention on the Right of the Child (CRC) observed, *inter alia*, as follows:

“20. The child has to be prepared for responsible life in a free society in the spirit of understanding, peace, and tolerance. Use of corporal punishment is antithetic to these values. We cannot subject the child to torture and still expect him to act with understanding, peace and tolerance towards others and be a protagonist of peace and love. It was probably for this reason Mahatma Gandhi said that “if we are to reach real peace in this world, and if we are to carry on a real war against war, we shall have to begin with children, And if they will grow up in their natural innocence, we won't have to struggle, we won't have to pass fruitless idle resolutions, but we shall go from love to love and peace to peace, until at last all the corners of the world are covered with that peace and love for which, consciously or unconsciously, the whole world is hungering.

21. Child being a precious national resource is to be nurtured and attended with tenderness and care and not with cruelty. Subjecting the child to corporal punishment for reforming him cannot be part of education. As noted above, it causes incalculable harm to him, in his body and mind. In F.C. Mullin v. Administrator, Union Territory of Delhi and others MANU/SC/0517/1981: 1981 CRiLJ306, the Supreme Court held that every limb or faculty through which life is enjoyed is protected by Article 21. This would include the faculties of thinking and feeling. Freedom of life and liberty guaranteed by Article 21 is not only violated when physical punishment scars the body, but that freedom is also violated when it scars the mind of the child and robs him of his dignity. Any act of violence which traumatises, terrorises a child, or adversely affects his faculties falls foul of Article 21 of the Constitution. In saying so we are also keeping in view the Convention on the Rights of the Child which in clear terms cast an obligation on the state party 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, maltreatment, torture, inhuman or degrading treatment, exploitation including sexual abuse while in the care of the parent, legal guardian or any other person who are in the care of the child. The signatory state is also obliged to protect the dignity of the child. We have relied upon the Convention in consonance with the decision of the Supreme Court in Bandhua Mukti Morcha v. Union of India and others MANU/SC/0552/1997:[1997]2SCR379, wherein the Supreme Court relying upon the Convention on the Rights of the Child made use of the same and read it along with Articles 21,23,24,39(e) and (f) and 46 to hold that it was incumbent on the State to provide facilities to the child under Article 39(e) and (f) of the Constitution. It was also observed that child cannot develop to be a responsible and productive member of the society unless and environment is created which is conducive to his social and physical health.ö

From the above case we note that the existing law of the country concerned allowed corporal punishment in the school setting and those provisions were struck down by the superior court.

So far as we have seen, 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 indicate that corporal punishment is pervasive in the homes, schools and work places. It is also pointed out that the Penal Code and the Code of Criminal Procedure, the Prisoners Act, 1894, Whipping Act, 1909, Cantonment Pure Foods Act, 1966, Suppression of Immoral Traffic Act, 1933, Railways Act, 1890 and the Children Rules, 1976 provide for the imposition of corporal punishment for certain offences. But these do not relate to the school or home setting.

In a report compiled by Global Initiative<sup>1</sup> it has been suggested that section 89 of the Penal Code provides a defence for the imposition of corporal punishment, thereby suggesting that corporal punishment such as those imposed by the parents or teachers are allowed by law. This in our view is an erroneous argument since section 89 does not at all relate to corporal punishment, as would be apparent from the other provisions of law contained in that chapter of the Penal Code. Chapter IV of the Penal Code is titled "General Exceptions" and gives details of acts which would not constitute a criminal offence. In our view, reading section 89 together with section 91 would expose the error in the interpretation relied upon by Global Initiative. Section 89 and 91 provide as follows:

89. 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:

Provided-

*First.*-That this exception shall not extend to the intentional causing of death, or to the attempting to cause death;

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<sup>1</sup> An international organisation set up in 2001 to campaign for worldwide prohibition by law of all corporal punishment of children, whether by parents or schools.

*Secondly.*- That this exception shall not extend to the doing of anything which the person doing it knows to be likely to cause death, for any purpose other than the preventing of death or grievous hurt; or the curing of any grievous disease or infirmity;

*Thirdly.*- That this exception shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity;

*Fourthly.*- That this exception shall not extend to the abetment of any offence, to the committing of which offence it would not extend.

*Illustration*

A, in good faith, for his child's benefit without his child's consent, has his child cut for the stone by a surgeon, knowing it to be likely that the operation will cause the child's death, but not intending to cause the child's death. A is within the exception, inasmuch as his object was the cure of the child.

91. The exceptions in section 87, 88 and 89 do not extend to acts which are offences independently of any harm which they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

*Illustration*

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence by reason of such harm; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

Corporal punishment is 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. The third proviso to section 89 provides that the exception of section 89 shall not extend to the voluntary causing of grievous hurt, or to the attempting to cause grievous hurt, unless it be for the purpose of preventing death or grievous hurt, or the curing of any grievous disease or infirmity. This, therefore, clearly excludes any situation where a teacher causes

grievous hurt to a student. Section 91 makes it clear that any hurt which itself would amount to a criminal offence is not covered by the exception. Thus beating a child with a cane causing a bleeding injury would be an offence under section 323 of the Penal Code and would, therefore, not be covered by the exception in section 89. In our opinion this section as well as some of the other sections in this chapter relate to acts done by persons giving medical care and as such corporal punishment is not contemplated by these provisions in Chapter IV of the Penal Code.

Moreover, it is our view that the argument that the parent or a child consents to corporal punishment in the school is a fallacious argument. When a child is admitted in any school the parents and the child consent to be given educational instruction. Unless any particular school has within its written prospectus a stipulation that the child may be subjected to corporal punishment in the event of any breach of school regulation or for lack of academic attainment or for indiscipline generally, it cannot be said that either the parents or the student has consented to the child being subjected to corporal punishment.

However, after going through the legislation relating to schools and madrasahs, we find that section 39(2) of the East Pakistan Intermediate and Secondary Education Ordinance, 1961 provides for framing regulations and in such regulations published in the Dacca gazette, part-I dated 15<sup>th</sup> September 1966, there is provision for disciplinary action against students of secondary school, intermediate colleges and intermediate section of degree colleges. In the said regulations certain actions and behaviour of students are deemed to constitute the offence of indiscipline and misconduct. The regulations then provide for infliction of suitable penalties when, if any pupil is found guilty of indiscipline or misconduct, it would be for the head of the institution to take disciplinary action and award punishment unless mass punishment was considered necessary, when the matter would be reported to the Chairman of



the Board and his orders would be awaited. The punishment available under this regulation are: (i) imposition of work set as punishment, (ii) detention, including extra drill (iii) fine (iv) suspension (v) expulsion and (vi) other punishment. The method of implementing punishment is given in the regulations. The mode of other punishment is detailed in the regulation which provides as follows:

**“(vi) Other punishment**

A teacher will often be able to impose other punishments which will be more suitable to certain offences than the punishments which have been mentioned above. When this is done, these three considerations should be borne in mind-

- (a) The punishment must never be in any way cruel.
- (b) A punishment which will occupy a pupil in the open air will be more beneficial than a punishment which confined him in a class-room.
- (c) When possible, the punishment should take the form of some useful occupation.

Thus, we do not find any reference to imposition of corporal punishment. We note that this regulation relates to older children attending secondary schools and as such we cannot imagine any regulations allowing corporal punishment to younger children. To our knowledge no such regulations imposing corporal punishment on any children attending any educational institution exists. We also note from the above mentioned regulations that before a teacher turns to punishment he will naturally commence with remonstrance and reasoning and will show his disapproval, which may in itself suffice to meet the case. A warning in many cases will be found to be sufficient, especially if it is accompanied by entry of the boy's name in the conduct register. This demonstrates to us that the aim of the regulations relating to discipline is to punish only as a last resort and still then there is no provision for subjecting any student to corporal punishment.

We have also perused the Madrasha Education Ordinance, 1978 and the Registration of Private Schools Ordinance, 1962 and do not find any

provision for imposition of corporal punishment on students. Nevertheless, corporal punishment has almost become a fact of life in Bangladesh and appears to be accepted as the norm by the children and adults alike. This is clearly evidenced at least by one of the cases detailed in the writ petition where a teacher, respondent No.41 beat a boy student of Class VIII who had to be hospitalized as a result. We were told that medical costs of Tk.5,000/- were recovered from the teacher, but upon inquiry by an Assistant Inspector of the Madrasha Education Board the father and the victim said that they had no complaint. As the medical costs were met, the managing committee, teachers and the local people settled the matter before any inquiry could be held. In the case concerning respondent No.32 a girl student was hospitalized after being subjected to a beating by her teacher for not performing her daily prayers. The report of the Assistant Inspector the Bangladesh Madrasha Education Board found the allegations to have been established where a girl of Class-VIII was caned for not saying her prayers and required treatment in the health complex for eight days, but her father stated that they had no complaint against the teacher. As the family was poor, the medical costs were borne by the teacher and the principal of the Madrasha. In the case concerning respondent No.33 a girl student of Class-IX was caned by her teacher for not wearing the school uniform. The report prepared by the Deputy Controller (Admission), Bangladesh Madrasha Education Board found that the girl had been beaten for not wearing black bhurka (all-covering outer garment) and when she resisted the caning, the teacher's ball pen went into her eye. She was initially given medical treatment locally and then admitted to the sadar hospital. The father of the victim filed a case under Nari-o-Shishu Nirjatan Daman Ain, but final report was given due to the fact that a settlement was reached between the parents and the teacher that she would be admitted to a vocational training school.

The above examples are but a tip of the iceberg so far as physical manifestation of corporal punishment is concerned. In the case relating to respondent No.31 a boy aged 10 committed suicide after being caned in school by a teacher for allegedly stealing money. The teacher was suspended temporarily and departmental proceeding was started, which is still ongoing. In a number of the cases which were brought to our notice in the writ petition, in spite of passage of several months, we did not receive any report at the time of delivery of judgment. A number of the cases clearly demonstrate allegation of a criminal acts by the teachers concerned resulting in serious bodily injury and even death, but the criminal cases either did not proceed due to lack of proper investigation by the police or due to settlement achieved through mediation or *salish* (localised arbitration). We also do not find any response to the Rule from respondent No.5, the Secretary, Ministry of Home Affairs and respondent No.6, Secretary, Ministry of Women and Children Affairs. We would expect the Secretary of the Ministry of Home Affairs to ensure that where there are allegations of criminal offence against teachers the police would be put into action for proper investigation and disposition in accordance with the law of the land.

In spite of the grim picture noted above, we are heartened by the action taken by the Ministry of Education in the past. On 21.04.2008 the Primary Education Directorate of the Ministry of Primary and Mass Education issued a circular relating to appropriate behaviour towards students. This circular concerned students between the ages of 5-10 years, so far as it relates to punishment both physical and mental both in the home setting as well as in the educational institution. It was observed that such mental and physical abuse hampers healthy and natural development of the child and steps were directed to be taken for the prevention of such abuse and for creating awareness regarding the development of negative behaviour. Consequently the concerned authorities were asked to direct all concerned to refrain from all physical and

psychological torture, cruelty, scolding and other untoward behaviour towards all students of primary schools.

On 18.03.2010 the Primary Education Directorate issued another circular regarding behaviour towards child students. It was observed that in spite of written directives not to behave badly towards the students various types of physical and mental torture were being inflicted within the schools. Reference was made to a report by UNICEF highlighting incidents of scolding/insulting, caning on the rump, striking with the stick etc., which was not acceptable to the students and which resulted in the student becoming frightened and reluctant to go to the school and also some of them stopped going to school altogether. Consequently, a direction was issued upon the teachers not to indulge in such behaviour, including physical and mental torture, cruelty and scolding etc. In this regard the Training Division of the Directorate was directed to take up these issues during the training programme.

After the issuance of the present Rule, on 09.08.2010 the Ministry of Education issued a circular in the following terms:

No. 37.031.004.02.00.134.2010-451

Date 25 Srabon 1417  
09 August 2010

#### CIRCULAR

Subject: Regarding the Ending of Corporal Punishment on Students in Educational Institutions.

It has been noted that in some Governmental and non-governmental educational institutions students are being subjected to inhuman and cruel punishments by the teachers for breach of institutional discipline, negligence in studies and other reasons. Such news is often seen in the news media.

It is the duty of a teacher to assist a student to ensure his/her physical and mental development through proper education and to encourage them to become good citizens by acquiring necessary knowledge and skills. Corporal punishment hinders students' development. As a result, the desired educational outcomes cannot be achieved. Thus the imposition of corporal punishment is totally undesirable.

Given the extreme urgency of taking measures to end corporal punishment in educational institutions without further delay, the following directions have been issued:

01. Corporal punishment is absolutely prohibited in all educational institutions;
02. Inflicting corporal punishment shall be considered to constitute misconduct;
03. District Education Officers and Upazilla Secondary Education Officers shall take effective measures to end corporal punishment; they shall take measures against persons imposing corporal punishment under the Bangladesh Penal Code 1860, the Children Act, 1974 and, where appropriate through initiating departmental action;
04. Heads of educational institutions will take necessary steps in their own institutions to end the infliction of corporal punishment;
05. School management committees shall take steps in their own institutions to identify the teachers who impose corporal punishment and shall take remedial measures in accordance with the rules;
06. Inspectors of the concerned offices, departments and boards of education under the Ministry of Education shall monitor the issue of corporal punishment and shall mention such matters in their inspection reports while inspecting educational institutions.

Thereafter, the Primary Education Directorate issued a memo on 23.08.2010. It was observed in that memo that in the educational institutions as well as in the home settings children are being abused physically and mentally, their normal development is being impaired and a negative impact created upon their mind. As a result all physical and mental torture, cruelty and scolding as well as improper behaviour towards children in primary schools was to be prohibited and the matter was to be informed to all school teachers. Thus, effective steps were put in place for prohibiting corporal punishment in schools, but in spite of that several other incidents in schools in Dhaka and

within the periphery of Dhaka were brought to our notice subsequent to the issuance of the Rule, as a result of which we directed proper steps to be taken by the authority concerned. Subsequently, as informed to us by learned Deputy Attorney General, the Education Ministry and other concerned authorities took steps in order to formulate a policy called, “শিক্ষা প্রতিষ্ঠা-ন ছাত্র-ছাত্রী-দের শারীরিক ও মানসিক শাস্তি প্রদান নিষিদ্ধকরণ নীতিমালা, ২০১০” (Guidelines for the Prohibition of Physical and Mental Punishment of the Students of Educational Institutions, 2010). Included in these draft guidelines are, inter alia, that children in educational institutions shall not be subjected to physical and mental punishment, including all sorts of physical assault on the body or any part of the body of the student by use of hands, legs or any implement and also indirect physical assault by making the child hold his own ears while doing sit-ups or putting his head under the table or bench or directing him/her to do any work which is prohibited under the labour laws. Also to be prohibited is mental torture or humiliation which includes adverse comments about the child’s parents, his/her ethnic identity etc. It is stated that if any teacher is found to have imposed any corporal punishment then it would be deemed as misconduct punishable under the Government Servants (Conduct) Rules 1979 and the Government Servants (Discipline and Appeal) Rules, 1985. The delinquent teacher may also be punishable under the criminal laws. However, we note that there is no sanction against teachers of private schools other than under the criminal laws. We would suggest such a situation would be discriminatory since no departmental proceeding is envisaged for the teachers working in the private educational institutions. In our view, in such a situation there should be separate law to regulate the conduct/mis-conduct of teachers in the private educational institutions.

It appears that consequent upon the Rule being issued by this Court a meeting was held on 29.08.2010 presided over by the Honorable Minister, Ministry of Education where discussion took place with regard to guidelines to

be issued prohibiting corporal punishment on students. Among the resolutions was one to broadcast through the various public media including radio, television, private channels and national newspapers as well as leaflets and posters regarding prohibition of corporal punishment in the schools.

We wish to express our appreciation for the timely publication of the guidelines dated 31<sup>st</sup> October, 2010. The Constitution in Article 35(5) provides that no person shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. This clause relates to punishment upon conviction for a criminal offence. In our view it is all the more applicable to persons who have not committed any offence and who cannot be subjected to such treatment for acts and behaviour which does not amount to a criminal offence. Moreover, Bangladesh is a signatory to the Convention on the Rights of the Child (CRC) 1989; therefore, it is incumbent upon all authorities to implement the provisions of the Convention. In this regard we take support from the decision in the case of *Hussain Muhammad Ershad Vs Bangladesh and others, 21 BLD (AD) 69*. In that case B.B. Roy Chowdhury, J. observed as follows:

“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.”

Similarly it was held in the case of *State vs Metropolitan Police Commissioner, 60 DLR 660* that being a signatory to the Convention Bangladesh is obliged to implement the provisions thereof.

Article 28 of the Convention is relevant to the issue before us and we have no hesitation to hold that in the light of the Convention corporal punishment upon the children must be prohibited in all settings including schools, homes and work places. Children who are subjected to corporal punishment or indeed psychological and emotional abuse cannot be expected

to develop freely and properly and will not be able to give their best to this society. We cannot ignore the effects of physical and mental torture on the proper development of children which will lead to inadequate achievement resulting in lack of education and poor prospects of better living standards which in turn will stoke the poverty cycle.

There are by now numerous countries of this world, both advanced and less developed, who have adopted prohibition of corporal punishment both at home and in the education institutions. As this is for the benefit of children, who are citizens of this country and future flag-bearers of the nation, we believe that corporal punishment should be prohibited throughout the country in all settings. There should be a positive awareness drive aimed at all parents, teachers and others who take on the responsibility of caring for children that physical, psychological and emotional abuse of children can never be for their good.

In order to make the prohibition of corporal punishment in the educational establishments effective, the laws relating to disciplinary action against the teachers, who impose corporal punishment on students are required to be amended. In this regard we hereby direct the Ministry of Education to ensure inclusion of a provision within the Service Rules of all teachers of public and private educational institutions of the country, by incorporating the imposition of corporal punishment upon any students within the definition of 'misconduct'. Thus, any teacher accused of imposition of corporal punishment on any student will be liable to be proceeded against for misconduct and he or she shall face the consequence of such disciplinary proceeding as mentioned in the Service Rules. In addition he will be liable for any criminal offence committed in accordance with the existing laws of the land.

With regard to the prohibition of corporal punishment within the home and work places, the government is directed to consider amending the Children



Act, 1974 to make it an offence for parents and employers to impose corporal punishment upon children.

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.

With the above observations and directions, the Rule is made absolute without, however, any order as to costs.

Before parting, we wish to express our appreciation to the learned advocates for their valuable assistance.

Let a copy of this judgment be communicated to the Ministry of Education, Ministry of Law, Justice and Parliamentary Affairs, Ministry of Home Affairs and Ministry of Women and Children Affairs at once.

**Sheikh Hassan Arif, J.**

I agree.

**I s m a i l**