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**CORPORAL PUNISHMENT OF CHILDREN IN BANGLADESH IN THE LIGHT OF
THE COUNTRY'S HUMAN RIGHTS OBLIGATIONS**

Master's Thesis

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INTRODUCTION

Among 170 million people almost 50% is children in Bangladesh.¹ Violence against children can occur in many forms that violets the rights of the child. Corporal punishment is one of the forms which are commonly used in Bangladesh as a disciplinary technique on children. It is a common saying in Bangladesh that, children need to be well-taught at home which is also otherwise known as family education. Also, it is very commonly believed that if a child does not behave or show bad manners, it is viewed as a reflection of poor family education.

For that, parents are often the ones to be criticized for not being able to teach their child properly. Similar to the Korean culture, also in Bangladesh, often the term 'teaching' or 'education' has been used synonymously with rearing. Hence, a child who is well taught is one has been well brought up.²

Unlike Western countries, until recently, corporal punishment has not been viewed as a serious problem in Bangladesh and seems to be associated with the power of the traditional culture. Till date children have been treated as the possession of their parents where parents are always superior, and children are inferior. Therefore, corporal punishment towards children by their parents has been supported strongly by the traditional social norm as it is believed to be a necessary part of parental love.

Like many countries, society upholds parents' right to discipline their children in any way they wish in Bangladesh. As a result, corporal punishment and strict disciplinary methods are accepted as a positive expression of parents' concern and care for their child rather than as a problem. Both in urban and rural areas in Bangladesh, corporal punishment on children is practiced on a belief that the more the parents love their child; they should more cane him/her. Therefore, this practice seems to illustrate the socially sanctioned oppression of children.

¹ Ali Imman. Towards a justice delivery system foe children in Banglades, a guide and Case law on children in conflict with the law.

² S. Yang .Cane of Love: Parental Attitudes towards Corporal Punishment in Korea, The British Journal of Social Work, Vol.39, Issue 8, December 2009, pp.1540-1555, published on, 29 March 2008. Accessible at, <https://doi-org.ezproxy.utlib.ut.ee/10.1093/bjsw/bcn034>

The objective of this research is to analyze the Children Act 2013 in Bangladesh with Convention of the Right of the Child 1989 in the light corporal punishment of children concerning the countries international commitments. The ratification of 193 states of the UN Convention on the Rights of the Child 1989³ shows the acceptance and recognition of the children's rights across the globe so as the violence against the children by physical abuse. Bangladesh ratified the CRC in 1989.

The context of the right not to be tortured by adults in Bangladesh required further research, and therefore, there is an excellent value in complementing the research gap by analyzing the national law in the light of international treaties. For this reason, the author finds a great value analyzing the relevant articles of Convention of the rights of the Child (CRC) with the domestic laws in Bangladesh as because the United Nations has clearly stated that corporal punishment violates the Convention on the rights of the Child.⁴

Bangladesh amended the 'Shiusu Ain 2013⁵ or the Children Act in 2013 (CA 2013) which is the major Act concerning children which replaced the Children Act of 1974. Still, the CA 2013 did not manage to comply with many of the rights enshrined in the CRC. The primary focus of this research lies to the challenges for implementing the international law in national level relating to the corporal punishment despite legal and policy frameworks on both national and international levels. The study addresses the occurrence of corporal punishment on children in different settings like family, schools, workplace, judicial and other settings in Bangladesh.

In order to conduct the study, the author formulated one primary research question and three other additional questions. The main research question is, whether Bangladesh complies with its international obligations regarding the corporal punishment on children enshrined in the Convention of the Rights of The Child 1989? If not, what are the significant challenges for

³ U.N. Convention on the Rights of the Child, G.A. Res. 44/25, U.N. GAOR, 44th Sess., U.N. Doc. A/Res/44/25 (1989); Hereinafter UNCRC

⁴ United Nations, Committee on the Rights of the Child (CRC). (2007, March 2). CRC General Comment No. 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (U.N. CRC/C/GC/8). Retrieved from <http://www.refworld.org/docid/460bc7772.html>

⁵ In Bengali Children Act 2013 is called Shisu Ain 2013 which was enacted in Bengali language.

Bangladesh to harmonize international law at the national level? Additionally, the problem refers to the following questions:

- a) Is it because of the nature of the legal system with a complicated treaty application procedure of Bangladesh?
- b) Is it because the law relating to rights of the child is scattered where corporal punishment is State authorized or backed by law without a proper definition, punishment measures and monitoring system?
- c) Is it because of the social acceptance of corporal punishment as the best interest of the child?

The object of the thesis is corporal punishment on children, and for that reason, the definition of the term was discussed. Besides, extensive objective data has been provided in order to understand the seriousness of this problem in Bangladesh. This research also describes the legal framework of the children's rights against violence through corporal punishment in Bangladesh. In this respect, the author will not only focus on the States' legal obligation for implementing the international human rights instruments with the domestic level but also analyze the socio-economic context of Bangladesh, relevant policies and programs.

The structure of the thesis is divided into four chapters in order to answer the research questions. Chapter one is dedicated to analyze the object of the thesis, i.e., corporal punishment and also its relevance to the violation of rights of the child. The definition of corporal punishment is stated thoroughly as it was not incorporated in CA 2013. The thesis continues with the discussion of the international protection of the children from violence with a brief history. Offenses related to the children in CRC are mentioned in Article 19, 33,34,35,36. Since the thesis is concerned with the corporal punishment on children, it is of great use to emphasize in which the term "corporal punishment" was stated, therefore, particular attention is given to the Article 19 of the CRC which provides the term and also prohibits all forms of violence against children.

In addition, Article 1, 3, 28 were discussed thoroughly for their relevance to this particular problem. Also, an overall discussion of CA 2013 is done by the author in order to provide a better

understanding of the current state practice of the country as it is the major law relating to children in Bangladesh.

Chapter two describes the legal system of Bangladesh with the relevant articles of the Constitution of the country in order to answer the first question. This chapter also addresses the interaction of international human rights law and domestic law in a dualist country like Bangladesh. Also, the procedure of the treaty application will be discussed along with the provisions of the Constitution along with few case references from the Supreme Court of Bangladesh. The chapter continues defining the word 'child' in order to manifest the complexity due to the lack of a uniform definition of the word. Furthermore, this chapter will exhibit the provisions from different Acts and Statues in Bangladesh that legitimized corporal punishment in the legal system which will answer the second additional question.

Chapter three reveals the current position and the state practice of corporal punishment in different settings separately. The author also focuses on the central argument of non-compliance with the international human rights standards by analyzing numerical data collected through polls, surveys and questionnaires. The detail statistics was essential to demonstrate the magnitude of the unnoticed and unheard violation due to the social acceptance of the practice as the best interest of the child. In Bangladesh, the importance of corporal punishment has been broadly neglected due to the social norms as the majority of the people of the country believe that corporal punishment is necessary for the best interest of the child.

In order to answer the last question, the author analyzes the common arguments against the prohibition of all CP is an argument that a certain degree of "reasonable" or "moderate" corporal punishment is in the "best interest" of the child in the light of the art. 3 of the CRC. It was identified in art. 3, para.1, that the best interest of the child should be a primary consideration in all actions concerning children as the best interest of the child cannot be achieved by causing harm of the children. Moreover, the author discussed the reports of the committee to find out that how far the convention achieved a meaningful implementation and control mechanisms in a country like Bangladesh after 28 years of its ratification? Clearly, this analysis is a quantitative one.

Chapter four will have the discussion on the effects of corporal punishment also some possible alternatives for the policymakers. The detail discussions were necessary in order to propose practical recommendations. The author tries to answer the main research question in the last substantive chapter. The reality differs hugely than the existing relationship between international law and the domestic laws of Bangladesh. Indeed, in the end, this thesis proposes an end to the justification of violence of children and a vision of harmonization of National legislation and the international treaties

The author has used an analytical method in order to interpret the primary and secondary sources linked with the research questions. For the study, the author has analyzed the international human rights instruments mostly CRC which represents the primary sources used for carrying out the research. Also, the text of the Children Act 2013 itself along with the relevant case-law of the High Court Division and the Appellate Division of the Supreme Court as published in the various law reports in Bangladesh. In addition to this other relevant law relating to children in Bangladesh have used by the author. Secondary sources include relevant articles, literature, reports, etc. Also, using this method the author explores how the concept of the best interest of the child is understood in the socio-economic sphere of Bangladesh which contradicts with CRC.

The current state of knowledge of corporal punishment on children is a global concern, but until relatively recently, it had barely surfaced within the minds of most Bangladeshis, even those active in human rights groups. The UN Convention on the Rights of the Child includes the Right to Protection of the child against abuse, which is categorized as an Immediate Right.⁶ Therefore, CP constitutes a violation of human rights. Among the other settings, the issue of banning the corporal punishment in the family, a serious challenge to the children's better upbringing is not yet been active in Bangladesh. The relevance and value of this study lie in the better future generation and a better country.

⁶ All You Want to Know About Corporal Punishment. UNICEF India. Accessible at: <http://www.unicef.in/Story/197/All-You-Want-to-Know-About-Corporal-Punishment>

While discussing the limitation of the study, various challenges have been encountered during the drafting process by the author, for example, although children rights in Bangladesh have been incorporated in many Acts and statues, they are very much scattered and conflicting to each other. Children Act 2013⁷ is in Bengali, therefore, not available in the database in English. In this respect the author had to rely on the other sources from the web. Pertinent to mention that although Bengali is the State language of Bangladesh, till 1987 all laws were enacted in English. Besides, many relevant resources were not available on the web and therefore could not be accessible.

Furthermore, gathering data on cases instituted regarding corporal punishment was not possible due to the financial constraint as it was not listed on the web. Also, accurate was difficult to collect because most of the violence against children takes place behind closed doors, especially information on the physical punishment of babies and very young children. The author refrains from addressing the gender biased torture and those being physically abused in prostitution and trafficking.

I am very much thankful and express my gratefulness to my husband for his constant support and encouragement as the accomplishment of the task that would not be possible for me all alone without his persistent cooperation. I feel to acknowledge my indebtedness and a deep sense of gratitude to the Honorable Justice of the Supreme Court of Bangladesh Mr. Sheikh Hasan Arif for allowing me the opportunity to conduct this study by helping me through collecting the relevant materials from UNICEF Bangladesh. Last but not the least; I would like to express my sincere gratitude to my supervisor Ph.D. Lauri Mälksoo for his continuous and persistent support.

Keywords:

Violence against children, corporal punishment, child discipline, violent discipline,
The best interest of the child,

⁷ Shishu Ain 2013/Children Act 2013
http://bdlaws.minlaw.gov.bd/bangla_pdf_part.php?act_name=&vol=%E0%A7%AA%E0%A7%A9&id=1119

1. CORPORAL PUNISHMENT ON CHILDREN

Corporal punishment (CP) on children occurs globally and in all societies.⁸ It exists in every country of the world irrespective of social status, education, ethnic origin or financial condition. In Bangladesh, this practice is very commonly used as a disciplinary technique on children which is can be termed as violent discipline. Children face physical punishment by parents as well as from those entrusted with their care in school, in care and justice systems, as well as in places where they are working legally or illegally. CP forms violence against children that may frequently take place in the context of discipline in the form of physical, cruel or humiliating punishment.

Violence against children includes physical violence, psychological violence such as insults and humiliation, discrimination, neglect and maltreatment that conflicts with the child's human dignity and the right of the child to physical integrity. Violence is likely to result from a combination of personal, familial, social, economic and cultural factors, and the interrelationship among these factors can be difficult to untwine.⁹ On the other hand, each child as a human being has the right to his or her physical and personal integrity, and protection from all forms of violence.¹⁰

Corporal punishment was used in childrearing practices as to the time of ancient Greece and Rome as parents were justified beating their children, claiming that it was required to mold the child into the ideal citizen, respectful and obedient.¹¹ Nowadays, corporal punishments on

⁸ Ending Corporal punishment of children. A handbook for working with and within religious community. Save the Children. Accessible at: <https://resourcecentre.savethechildren.net/sites/default/files/documents/4420.pdf>

⁹ World Report on the Violence Against Children. Violence against children in the home and family. Accessible at: <https://www.unicef.org/violencestudy/3.%20World%20Report%20on%20Violence%20against%20Children.pdf.P-65>

¹⁰ UN Human Rights Standards and Mechanisms to Combat Violence against Children: A Contribution to the UN Secretary-General's Study on Violence against Children. Florence, UNICEF Innocenti Research Centre. UNICEF (2005).

¹¹ Deana Pollard, Banning Child Corporal Punishment, 77 TUL. L. REV. pp-575, 579,580 (2003). Accessible at: <https://elibrary.law.psu.edu/cgi/viewcontent.cgi?article=1703&context=psilr>.

children occur globally in all societies¹² and the majority of them are not yet protected in their homes. Majority of the global child population living in countries where CP is lawful for the parents to physically punish their child in the name of “discipline”. The desired outcome of physical punishment is child compliance with adult directives.¹³

The definition of the term ‘corporal punishment’ varies from jurisdiction to jurisdiction.¹⁴ The term corporal punishment and physical punishment are synonymous: “physical punishment is more commonly used among parents in the United States; “corporal punishment” is commonly used internationally by the teachers, principals and policymakers.¹⁵ The General Comment¹⁶ No. 8 of the Committee on the rights of the Child defines ‘corporal’ or ‘physical’ punishment is a form of a punishment inflicted on a person with the intention to cause to physical pain or discomfort. Conventional methods of CP include smacking, spanking, padding, caning, flagellation, flogging, branding even mutilation, etc.¹⁷

Corporal punishment is also defined as the use of physical force towards a child for the purpose of control and/correction, and as a disciplinary penalty inflicted on the body with the intention of causing some degree of pain or discomfort however mild. Punishment of this nature is referred to

¹² Global initiative to end to all corporal punishment on children. save the children (Sweden), Churches’ network for Non-violence. A handbook for work within religious community. Accessible at: <https://resourcecentre.savethechildren.net/sites/default/files/documents/4420.pdf>, P-9, see also, www.endcorporalpunishment.org, for up to date information(on progress).

¹³ Gawlik, J., Henning, T., & Warner, K. (2002). Physical punishment of children. Hobart, TAS: Tasmania Law Reform Institute. Retrieved 7 July 2009. Accessible at: <https://www.theactgroup.com.au/documents/CorporalPunishment.pdf>.

¹⁴ Christopher B. Fuselier, Corporal Punishment of Children: California's Attempt and Inevitable Failure to Ban Spanking in the Home, 28 J. Juv. L. 82 (2007), p-84

¹⁵ Gershoff.T. Elizabeth. More Harm than Good: a Summary of scientific research on the intended and unintended effects of corporal punishments on children.Law and Contemporary Problems,Vol. 73, No. 2, Corporal Punishment of Children (SPRING 2010), p-35.

¹⁶ For more about general comment, accessible at: <https://www.crin.org/en/library/publications/crc-general-comments>.

¹⁷ UN Committee on the Rights of the Child (CRC), 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), 2 March 2007, CRC/C/GC/8, Accessible at: <http://www.refworld.org/docid/460bc7772.html>

in several ways, for example; hitting, smacking, spanking and belting.¹⁸ Although most forms of corporal punishment involve hitting children with a hand or an implement (such as a belt or wooden spoon), other forms of corporal punishment include: kicking, shaking, biting and forcing a child to stay in uncomfortable positions (United Nations Committee on the Rights of the Child, 2006.)¹⁹ For this thesis, Corporal punishment signifies all of the above-mentioned categories. So, it can be said that, CP is one disciplinary technique to educate children about acceptable and unacceptable behavior.²⁰

Section 70 of the Children Act 2013(CA 2013) uses the term cruelty to a child which did not prohibit corporal punishment in rearing a child or even in schools. The section is widely drafted against violence and made it an offence committed by any person who has the custody, charge or care of any child. It describes punishment as assaults, ill-treats, neglects, forsakes, abandons unprotected, uses for personal service, or exposes in an indecent way and such assault, ill-treatment, negligence, forsaking, and abandonment etc. In addition, exposure causes unnecessary suffering or such injury to his health that leads to loss of eyesight of the child or hearing or injury to any limb or organ of the body, and any mental derangement of the children will constitute the punishment to a child. This section also provides a penalty for cruelty to a child with imprisonment for a term which may extend to 5 (five) years, or with fine which may extend to Taka 1 (one) lac, or with both.²¹

¹⁸ Cashmore, J., & de Haas, N. (1995). Legal and social aspects of the physical punishment of children. Canberra: Department of Human Services and Health. Accessible at: <https://www.theactgroup.com.au/documents/CorporalPunishment.pdf>

¹⁹ United Nations Committee on the Rights of the Child. (2006). Convention on the Rights of the Child. General comment no. 8. Geneva: General Assembly of the United Nations. Retrieved 1 February 2009,

²⁰Prue Holzer and Alister Lamontet al(ed). Corporal punishment: Key issues., NCP Cresource sheet, National Child Protection Clearing house. Accessible at: <https://www.theactgroup.com.au/documents/CorporalPunishment.pdf>

²¹ Bhuiyan Saiful. Convention on the Rights of the Child 1989:Bangladesh Compatibility and Gap Analysis.Policy Advocacy and Legislative Reform for Children Project,Legislative and Parliamentary Affairs Division.Ministry of Law, Justice and Parliamentary Affairs. 2016, P- 27,59.

In the absence of specific guidelines concerning physical punishment and physical abuse, confusion arises while discussing the insufficiencies of the state policies and their respective implementation when addressing the protection of children's rights. 'Beating' is a generic term commonly used for any corporal punishment in Bangladesh. The difference between corporal punishment and physical punishment also are not clear in many occasions. Corporal punishment would actually physically sticking the offender whereas physical punishment could just be being made the offender to do any types of psychical work. For example, running round the playing field several times or standing on the head for few minutes, etc. In this study the corporal punishment will be discussed in the light of CRC only. Also, the penal legislations in Bangladesh do not define the term rather Section 319 of the Penal code 1860 of Bangladesh incorporates the term 'hurt' inflicted with the intention of causing bodily harm or pain and other injuries.²² The term 'hurt' will not encompass all the categories of CP as defined in the CRC.

1.1. International protection of Rights of the Child

In this chapter the author briefly discusses the rights of the child that are protected through several international instruments. These international treaties are important tools for holding governments accountable for the respect for, protection of and realization of the rights of individuals in their country.²³ The right of the child contained in the Universal Declaration of Human Rights (UDHR) is on the basis of equality which is not binding in international law. Children, as human beings, are entitled to enjoy all the rights guaranteed by the various international human rights treaties that have developed from the Universal Declaration of Human Rights.²⁴ Among the six cores human rights treaties²⁵, ICESCR (1966) contains articles

²² Penal Code, 1860. Accessible at: http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=11

²³ Convention of the Rights of the Child. Human rights approach. Accessible at: https://www.unicef.org/crc/index_framework.html

²⁴ Preamble, Universal Declaration of Human Rights. Accessible at: <http://www.un.org/en/universal-declaration-human-rights/>.

²⁵ The International Covenant on Civil and Political Rights; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Elimination of All Forms of Racial Discrimination; and the Convention on the Elimination of All Forms of Discrimination against Women.

regarding education and health, issues most intimately connected with children.²⁶ The ICCPR also has several Articles that protect such valuable rights as the rights of life liberty and security of persons-rights that are applicable to all individual including children.²⁷

An international document promoting of child rights called the Declaration of the Rights of the Child, also known as the Geneva Declaration of the Rights of the Child, is, adopted by the League of Nations in 1924. It is stated in Section 37 of the UN charter that, no children will be subjected to torture, punishment and any cruel or inhuman or humiliating behavior. In November 1959, UN Declaration of the Rights of the Child (DRC), an extended form of the declaration was adopted in order to build upon the rights that had been set forth in a League of Nations Declaration of 1924. Among other, Principle 9²⁸ of DRC states that the child shall be protected against all forms of neglect, cruelty and exploitation. In reality, until the first half of the 1970s, children continued to be perceived as the objects and not the subject status of international law and adults had been accorded the subject status.²⁹

The application of human rights does not depend on any age groups, so general human rights are the same between children and adults. However, people under 18 years old often need special care and protection; therefore, in 1989 the Convention of the right of the Child (CRC) was adopted as the first legally binding international instrument to incorporate the full range of human rights –including civil, cultural, economic, political and social rights.³⁰ With the adoption of the CRC, the child becomes a subject of rights from an object of care and protection. The CRC has been described as the Magna Carta for children, for it aims at a holistic approach providing for the survival, development, protection, and participation.³¹ The Convention incorporates the full

²⁶ See also article 10(3) of the International Covenant on Economic, Social and Cultural Rights.

²⁷Rehman Javaid. International Human Rights Law : A Practical approach. Pearson education limited. England (1).2003. p-377.

²⁸ Declaration of the Rights of the Child. Accessible at:<https://www.unicef.org/malaysia/1959-Declaration-of-the-Rights-of-the-Child.pdf>

²⁹ Geraldine Van Bueren. International Documents on Children. Save the Children. Martinus Nijhoff Publishers, Dordrecht/Boston/London. p-xv.

³⁰ Protecting Child Rights. UNICEF for every child. Accessible: https://www.unicef.org/crc/index_protecting.html.

³¹Jaap Doek,Hhans van Looon and Paul laardingerbroek et al (ed). Children on the move, How to implement their right to family life, edited by –, Matiniou Nijhoff Publishers, p-134.

range of human rights for children including civil, cultural, economic, political and social rights³² for children including specific provisions regarding corporal punishment.

The prohibition of all forms of corporal punishment is also required by global international child instruments, namely Convention against Other Cruel, Inhuman or Degrading Treatment or Punishment,³³ the International Covenant on Civil and Political Rights³⁴ and the International Covenant on Economic, Social and Cultural Rights.³⁵ The United Nations General Assembly in its resolution³⁶ urges States to take legislative measures to prohibit all forms of violence against children in all settings including “cruel, inhuman or degrading forms of discipline.”

Apart from that, regional human rights treaty bodies also support prohibition, and there are high-level court judgments in a growing number of states condemning corporal punishment. Furthermore, the rights of the child are expressly incorporated in many regional Documents for the protection of the child rights, for example, African Charter on the Rights and welfare of the Child 1990³⁷ and European Convention on the Exercise of Children’s Rights 1996.³⁸

³² Protecting Child Rights. UNICEF for every child. Accessible at: https://www.unicef.org/crc/index_protecting.html.

³³ Bangladesh acceded the treaty in 1998 and made a Declaration on article 14 of the Convention regarding the victim of torture. Accessible at: https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-9&chapter=4&lang=en#EndDec

³⁴ Acceded by Bangladesh in 2000 and made a reservation on article 14. Reservation Article 14: Equality before court and tribunal and due process rights. Accessible: <http://indicators.ohchr.org/>, Accessed on 14.9.2018.

³⁵ Acceded by Bangladesh in 1998 with reservation on article 2, 3, 7 and 8. Accessible at: <http://indicators.ohchr.org/>.

³⁶ Resolution on the Rights of the Child adopted by the General Assembly, 13 March 2010, A/ RES/63/241, 18 December 2009, 18 December 2009, Para 27. Accessible at: http://www.un.org/en/development/desa/population/migration/generalassembly/docs/globalcompact/A_RES_63_241.pdf.

³⁷ The African Charter on the Rights and Welfare of the Child, with a Preamble and 48 articles, was adopted on July 11, 1990, and entered into force on November 29, 1999. OAU Doc. CAB/LEG/24.9/49 (1990). Accessible at: https://www.unicef.org/esaro/African_Charter_articles_in_full.pdf.

³⁸ European Convention on the Exercise of Children’s Rights 1996, e.i.f 01/07/2000

1.2. The relevant Articles on CP in the Convention on the Rights of the Child

The CRC is most widely accepted human rights treaty has been ratified or acceded by 192 States which explicitly acknowledges the distinct personality of children. Its 42 substantive articles deal with civil, political, economic, social and cultural rights.³⁹ These provisions also set up principles that include the promotion of prevention of violence and responses to protect all children from all forms of violence. In fact, the Convention constitutes a significant international legal reference for the protection of children's rights. Also, it establishes a comprehensive human rights standard for children, both in substantive content and implementation procedure.⁴⁰

States which have ratified the CRC are responsible for explicitly prohibiting all corporal punishment of children and should ensure the proper implementation of the legislation. The convention also requires the legal reforms that should be accompanied by continued public education, combined with high quality support for parents and resources for the promotion of positive, non-violent parenting and child development training, for parents, carers, teachers and others entrusted with the care of children.⁴¹

Various articles of the CRC assert the rights of children to physical and personal integrity and establish high standards for protection. The UN Convention on the Rights of the Child includes the Right to Protection of the child against abuse, which is categorized as an Immediate Right. Art. 1 provides the definition of 'child' will be discussed in the chapter below. Art. 3 of the CRC provides that, "In all actions concerning children, whether undertaken by the public or private

³⁹ Implementation Handbook for the Convention on the Rights of the Child, Revised edition. Geneva, UNICEF.

⁴⁰ Sharon Detrick and Paul Vlaardingerbroek et al. Globalization of Child Law .The role of the Hague Conventions, Martinus Nijhoff Publishers.p-27.

⁴¹ Ending Corporal punishment of children.A handbook for working with and within religious community. Save the Children. Accessible at: <https://resourcecentre.savethechildren.net/sites/default/files/documents/4420.pdf>

social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child should be a primary consideration.” Art. 19 explicitly requires states to protect children from all forms of physical or mental violence and all forms of torture or other cruel, inhuman or degrading treatment or punishment. Art. 19(1) indicated that the primary focus on intra-familial situations of child abuse or neglect.⁴²

Also, the Article requires 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.”

Similarly, Art. 28 states that the governments must ensure that school administrator reviews their discipline policies and eliminate any discipline practices involving physical or mental violence, abuse or neglect. Additionally, Art.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”. Art. 39 of the CRC states that, States must provide support to the children who are the victim of violence. The document constitutes a political tool for advocacy and international mobilization of the rights of the child. The Convention is an international agreement intended to have a long-term impact.⁴³

On the other hand, the primary law governing juvenile justice in Bangladesh is the Children Act 2013. The other laws including Children Rules 1976, The Code of Criminal Procedure 1898, the Penal Code 1860, the Special Powers Act 1974 and the Whipping Act 1909 will be also be discussed in the later chapters.

⁴² Sharon Detrick. A Commentary on The United Nations Convention on the Rights of the Child ,p-321.

⁴³ Legislative History of the Convention of the Rights of the Child. United Nations, New York and Geneva 2007. Vol-1. P-xLii.

1.3. Children Act 2013

Bangladesh was a part of Indian sub-continent until 1947 and the most significant consolidated law to deal with children was the Children Act 1922 (Bengal Act II of 1922) which was replaced Children Act 1974(1974 Act). Bangladesh became Independent in 1971, and at time of post-independence, the 1974 Act was perceived to be in favor and progressive for that time. Although the 1974 Act does provide for some of the safeguards which also can be found in Articles 37 and 40 of the CRC relating to the children conflict with the law, the 1974 Act does not incorporate many of the principles and the CRC as it was pre-dating the CRC.

Although the Children Act of 1974 was regarded as juvenile justice legislation, gradually it was found that it was not adequate to address various requirements of CRC. Justice Imman Ali⁴⁴ points out three significant discrepancies of the 1974 Act with CRC. Firstly, the provisions of the 1974 Act and the Children Rules are not phrased in a way that they grant rights to children, which in turn makes children an object rather than a subject of right. Secondly, they do not include all rights and fundamental principles provided for under the CRC such as respect for the views of the child (child participation) and only to a limited extent the best interest of the Child. Thirdly, as juvenile justice legislation, it does not establish the comprehensive juvenile justice system as required under the CRC.⁴⁵

In order to keep up its international commitments, the Government of Bangladesh enacted the by the ‘Shishu Ain’ 2013 (in Bengali)/ Children Act, 2013 repealing the earlier Children Act 1974 with the aim of bringing the country in line with CRC. The Children Rules, 2016 had been prepared with a further explanation of the relevant provision of Children Act 2013 and as an aid to implementing the CRC. For example, the CA2013 changes the legal definition of a child from being a person under the age of 16 to one under that age of 18. Also, the CA 2013 criminalizes any cruelty inflicted on children at work both formal and informal. Again CA 2013 did not mention anything specifically about all types of perpetrators.

⁴⁴ Justice, Supreme Court of Bangladesh.

⁴⁵ Ali Imman. Towards a justice delivery system foe children in Bangladesh, a guide and Case law on children in conflict with the law.

Besides, the CA 2013 prescribes punishments for using or exploiting children in begging, in brothels, carrying drugs and other illegal commodities. The CA 2013 is in compliances with CRC in several matters, for example, under section 7-12, it establishes the Child Welfare Board (national, district, upazilla level). Also child- specialized police desk (section 13,14), alternative dispute resolution(section 37), separate children's court with the detail power and the procedure (section 16-42), diversionary measure for the children in conflict with laws (sections 48-51) bail for children (section 52), legal representation and legal aid (section 55-56), privacy (section 28,81).⁴⁶ The Children's Act 2013 explicitly prohibits the death penalty as a child (section 17 of the Act). However, it is not clear that this reform guarantees that no child will be subject to the death penalty.

Although the CA 2013 has achieved few goals, there are still some requirements of CRC that are yet to be complied with. For example, provisions related to recognition of parental responsibility, provision for purpose of children education, provision requiring role of media for the development of children, specific provision for ensuring social welfare for children provision for special protection for refugee children, children of minority indigenous group etc. are still remains as gaps with fulfillment of CRC requirements.⁴⁷

The CA 2013 has substantially amended much of the relevant legislation on the criminal sentencing of children, explicitly prohibiting the death penalty and life imprisonment for children. However, children may still be sentenced to corporal punishment. The Children Act 2013 explicitly prohibits life imprisonment for children {Sec 33(1 of the Act)}.Also, the CA 2013 provides for punishments for assault, neglect, dissertation, abuse, and exploitation of a child by a person under judicial settings not home, care settings and other places including schools and workplace. ⁴⁸

⁴⁶ The Children Act 2013: A commentary by justice Iman Ali, Bangladesh Legal Reform and Services Trust. Penal Reform International. Accessible at: <https://www.blast.org.bd/content/publications/The-Children-Act%202013.pdf> .

⁴⁷ Bhuiyan Saiful. Convention on the Rights of the Child 1989:Bangladesh Compatibility and Gap Analysis.Policy Advocacy and Legislative Reform for Children Project,Legislative and Parliamentary Affairs Division.Ministry of Law, Justice and Parliamentary Affairs. 2016,

⁴⁸ Bhuiyan Saiful. Convention on the Rights of the Child 1989:Bangladesh Compatibility and Gap Analysis.Policy Advocacy and Legislative Reform for Children Project,Legislative and Parliamentary Affairs Division.Ministry of Law, Justice and Parliamentary Affairs. 2016,

The traditional courtroom environment is intimidating for children who required testifying as a witness. Children Act 2013 strengthens the administration of justice by establishing children courts. Effective implementation of the Children Act 2013 is a matter of grave concern for the Honorable Supreme Court of Bangladesh. Like many social reformers, the judiciary of Bangladesh was concerned mostly with children accused of crimes and, in its several judgments; it was found out that a separate court system was necessary.⁴⁹

The court took a parental role believing that children should be rehabilitated rather than punished. Supreme Court Special Committee on Child Rights was established in 2016 to monitor the effective implementation of the Children Act 2013 by its guidance, advice and supervision. In addition, UNICEF has been collaborating with the judiciary in its efforts to build adequate structures and systems for the effective implementation of the Children Act 2013 at the National and divisional level. Keeping the best interest of children at the centre, an MOU has been signed between UNICEF and the Supreme Court of Bangladesh including monitoring implementation of the Children Act 2013 among others. It also aims to ensure that all legislative, administrative, judicial proceedings and decisions, policies and projects as well as criteria for relevant persons in authority are developed.⁵⁰

As a result, the CA 2013 makes provisions for avoiding the re-victimization of a child in the course of the judicial system process. Under Section 16 of the CA 2013, at least one court is to be established in every district headquarter and in every metropolitan area. It provides for Children's courts that conduct the trial a family like environment, or in-camera and without revealing the identity the identity of the child, a child-friendly as possible. Section 19 of the said Act also states that the sitting arrangement of the children court should be specially arranged that every child can sit close to their parents and at the same level the judge, lawyer police and other

⁴⁹ UNICEF, Bangladesh. Media centre, UNICEF extends ties with Supreme Court to strength justice for Bangladesh. Accessible at: https://www.unicef.org/bangladesh/media_10534.html.

⁵⁰ UNICEF, Bangladesh. Media centre, UNICEF extends ties with Supreme Court to strength justice for Bangladesh. Accessible at: https://www.unicef.org/bangladesh/media_10534.html.

relevant officers are sitting. Certainly, the quality of infrastructure of Children's Courts would be reformed the juvenile justice system in Bangladesh.

In order to dig out the major impediment to the implementation of the Convention rights in issue, it is of most importance to peruse the legal system of Bangladesh in detail with some relevant case references. The author will try to find out the answer to the first research question in the next chapter.

2. LEGAL SYSTEM OF BANGLADESH

The norms of the international law are applied through two systems namely, monism and dualism.⁵¹ With dualistic common law tradition, Bangladesh requires incorporation of the international agreements within domestic law in order for them to given effect. Unlike automatic adoption, the doctrine of transformation stipulates that rules of international law do not become part of national law until the state has expressly adopted them. It requires incorporation into domestic legislation in the form of a new law or amendment of existing legislation to ensure conformity with the Convention. Also, dualism stresses that the rules of the system of international law and municipal law exists separately and cannot purport to have an effect on or overrule the other.⁵²

The effective national implementation or recognition of international human rights very much depends on the legal system of every individual country. That is why the difference in compliance of international law varies from state to state.⁵³

Bangladesh has a parliamentary form of government in which the President is the head of the State, and the Prime Minister and the cabinet perform the executive powers are performed by the cabinet. The Constitution empowered the Prime Minister and the cabinet to determine the treaty-making policies of Bangladesh where it is clearly found that similar to U.K., making a treaty is an executive act for its validity and approval of parliament is not necessary.⁵⁴ For this reason, like most of the common law countries, Bangladesh base their practice on that of the United Kingdom where treaties do not automatically become part of the Domestic law unless their contents are not enacted into law by the Parliament.⁵⁵

⁵¹ Katre Luhama. Universal Human Rights in National Contexts: Application of International Rights of the Child in Estonia, Finland and Russia. PhD Thesis. University of Tartu 2015.

⁵² Shaw N Malcolm. *International Law*, University Press, 6th Edition' 2010. p-131

⁵³ Pickering Heath. Why Do All States, Weak and Strong, Mostly Obey International Law?, *E-international Relations Students*, FEB 4 2014, Accessible at: <http://www.e-ir.info/2014/02/04/why-do-states-mostly-obey-international-law/>

⁵⁴ Islam Mahmudul. *Constitutional Law of Bangladesh*. Mullik Brothers. 3rd Edition, p-1026. Accessible at: https://www.researchgate.net/publication/312032430_Application_of_International_Law_in_Bangladesh_An_analysis_of_the_Supreme_Court_Judgments.FN_59.P-8.

⁵⁵ Dinah Shelton, *International Law and Domestic Legal Systems: Incorporation, Transformation, and Persuasion*, (Oxford University Press Inc, New York, 2001) p-10.

2.1. National acceptance of international law in Bangladesh

Bangladesh became independent in 1971 and becomes a member of the United Nations in 1974. The country ratified all the core international human rights instruments including the Optional Protocols to the United Nations Convention on the rights of the Child (UNCRC), and it was the first country in South Asia sub-region who became a party to the Rome Statute.⁵⁶

Despite its adherence to the dualistic approach, Bangladesh showed respect to principles of international law since its inception. The adherence to the international law can be traced in the Proclamation of Bangladesh Independence⁵⁷ in 1971, which also worked as a basis of the Constitution of the Peoples' republic of Bangladesh.⁵⁸ The text of the Proclamation has been annexed to the Bangladesh Constitution.⁵⁹

All the fundamental rights contained in the Constitution of Bangladesh are derived from the Universal Declaration of Human Rights. The civil and political rights are termed as fundamental rights which are contained in Part III of Bangladesh Constitution from article 26 to Article 47 and these rights are judicially enforceable. The economic, social and cultural rights have been incorporated as Fundamental Principles of State policy in Part II from Article 8 to Article 25, which are not judicially enforceable.

The reality differs hugely since the Government of Bangladesh until 2013 did not undertake any comprehensive review of its legislation regarding violence against children through corporal punishment. Hence, the CRC in its 1993, 2003 and 2009 Concluding Observations⁶⁰ on the Initial⁶¹ and Periodic State Reports⁶² of Bangladesh, express its concern about “the unclear status of

⁵⁶ Parliamentarians for global actions. Accessible at: <https://www.pgaction.org/campaigns/icc/asia/bangladesh.html>.

⁵⁷ Mujibnagar, Bangladesh Dated 10th day of April, 1971.

http://www.docstrangelove.com/uploads/1971/sbbk/documents/Proclamation%201971_M_Dalil_Vol_03_MMR.pdf

⁵⁸ Karzon, S.H.R, and Faruk, A.A.,(1999), Status of International Law under the Constitution of Bangladesh, 3:1 Bangladesh Journal of Law, 3:1, at p. 26.

⁵⁹ S M Masum Billah, “Proclamation of Bangladesh Independence: Implications for International Law” (DHLR Blog, 17 April 2015) <http://www.dhakalawreview.org/blog/2015/04/proclamation-of-independence-801>

⁶⁰ Concluding Observations of the Committee on the Rights of the Child, Bangladesh, UN Doc. CRC A/53/41 (1998), CRC/C/15/Add.221 (2003) and CRC /C/BGD/CO/4 (2009)

⁶¹ Initial Report of States Parties due in 1992: Bangladesh;07/12/95, CRC/C/3/Add.38

⁶² Periodic State Reports 1997, 2001. Recently Bangladesh submitted its combined third and fourth report (2007).

the Convention in the domestic legal framework and the insufficient steps to bring existing legislation into full conformity with the Convention.⁶³ It recommended to “taking all effective measures to harmonize its domestic legislation fully with the provisions and principles of the Convention.”⁶⁴

The Constitution of Bangladesh contains mainly two regarding international law and relations, they are, Art.25 and Art. 145A. Art. 25, titled ‘Promotion of international peace, security, and solidarity’, states that the State shall...respect for international law and the principles enunciated in the United Nations Charter. Some other principles of customary international law have also been found in Article 25of Bangladesh Constitution, and they are the renunciation of the use of force in international relations, right to self-determination and principle of supporting oppressed people⁶⁵.

Now the question arises how the international treaty is executed in the national laws of Bangladesh? The procedure is discussed in Art, 145A below.

2.2. The Procedure of treaty application in Bangladesh

The constitution of Bangladesh, however, does not contain any explicit provisions regarding the legislative endorsement of treaties. As like the English common law system the statutory law is enacted by the legislature and interpreted by the Supreme Court. Art. 80 of the of the Bangladesh Constitution provides that, every proposal in Parliament for making a law shall be made in the form of a Bill and when a Bill is passed by the Parliament it shall be presented to the president for assent. The Parliament can make any law which is not inconsistent with the Constitution.⁶⁶ Article 145A of the Constitution of Bangladesh⁶⁷, rather vaguely states that, “all treaties with foreign countries shall be submitted to the President, who shall cause them to be laid

⁶³ Concluding Observations (1998), para.12

⁶⁴ Concluding Observations (2003), Para. 13

⁶⁵ Article 25 of the Constitution of the people’s republic of Bangladesh. Accessible at: http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367 http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367

⁶⁶ Bangladesh Parliament. Accessible at: <http://www.parliament.gov.bd/index.php/en/about-parliament/functions-and-procedures-of-parliament>.

⁶⁷ Article 145A of the Constitution of Bangladesh. Assessable at: http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367

before Parliament.” This provision requires to be put forward for discussion only and not for ratification.⁶⁸

In addition, this article also provides that any such treaty connected with national security shall be laid in a secret session of Parliament. It does not clarify whether additional legal implementation through legislation is required. Thus the ambiguity prevails. Furthermore, this implies that the making of treaties is an executive and not legislative procedure in Bangladesh, owing to the fact that it is put up for ‘discussion’ in the Parliament. As a result, the status of international law within the domestic legal order remains in many ways unclear and international treaties are implemented. Therefore, it seems to be an incomplete provision which raises many issues and creating more problems rather than it solves in relation to implementation .⁶⁹

Through ratification Bangladesh has agreed to be bound by the obligations spelled out these by documents and to ensure implementation and protection of human rights enshrined therein. Yet, most international treaties ratified by Bangladesh have not been incorporated into the domestic legislation. So far, only one treaty titled the ‘Ganga Water Sharing Treaty 1966’ placed before the parliament in 1977 for the discussion and debate.⁷⁰ According to the article 27 of the Vienna Convention on the Law of Treaties, 1969, the state which has broken a rule of international law cannot justify itself by referring to its municipal law; otherwise, international law would be evaded by passing appropriate domestic legislation.

Under the principle of *pacta sunt servanda*, there is a general duty to bring municipal law into conformity with obligations under international law.⁷¹ It is no defense to a breach of an

⁶⁸ Indeed this discussion is fruitful to identify potential problems at the domestic level.

Shiekh Hafizur Rahman Karzon and Abdullah Al Faruque. 'Status of International Law under the Constitution of Bangladesh: An Appraisal'. Bangladesh Journal of Itw, Vol.3 No. I (1993) p 23. Accessible at: https://www.researchgate.net/publication/312032430_Application_of_International_Law_in_Bangladesh_An_analysis_of_the_Supreme_Court_Judgments

⁶⁹. Constitution of the People's Republic of Bangladesh. Accessible at: http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367.

⁷⁰Islam M., “Absence of Legal regime to apply treaties”, Law Opinion, The Daily Star, September 8, 2015. <http://www.thedailystar.net/law-our-rights/absence-legal-regime-apply-treaties-139354>

⁷¹Judy Obitre-Gama. The Application of International Law into National Law, Policy and Practice. Lecturer, Faculty of Law, Makere University, Kampala. Uganda. (The WHO International Conference on Global Tobacco Control

international obligation to argue that the state acted in such a manner because it was following the dictates of its own municipal law⁷². This view is also found in the Exchange of Greek and Turkish Populations Case⁷³. In the event of a conflict between international law and national law, the international law prevails,⁷⁴ once a state has ratified a treaty. An action by a state that might be unlawful under international law may nevertheless attract validity and protection in national law if there is a clear rule of national law to that effect.⁷⁵

It is an accepted principle that international covenants, conventions treaties and other instruments signed by State parties are not considered to be binding unless they are incorporated into the laws of the land. In *Hussain Muhammad Ershad v Bangladesh*⁷⁶ the Appellate Division of the Supreme Court of Bangladesh held “Although universal human rights norms, whether given in the UDHR or in the Covenants, are not directly enforceable in national Courts. But if their provisions are incorporated into the domestic law, they are enforceable in national Courts. The effective national implementation or recognition of international human right is very much depends on the legal system of every individual country. That is why the difference in compliance of international law varies from state to state.”⁷⁷

The national Courts should not straightway ignore the international obligation, 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. But in the cases where the domestic laws are clear and inconsistent with the international obligation of the State concerned, the national Courts will be obliged to respect the national laws, but shall draw the attention of the lawmakers to such inconsistencies”.⁷⁸ The approach of the court was further strengthen in the case of , *BNWLA v. Government of Bangladesh and others* , where the court

Law: Towards a WHO Framework Convention on Tobacco Control 7 to 9 January 2000, New Delhi, India.
Accessible at: <http://www.who.int/tobacco/media/en/JUDY2000X.pdf?ua=1.p-7>

⁷² Shaw N. Malcolm, *International Law*, 6th Ed., Cambridge University Press, 1998, p.133-134.

⁷³ 1925 P.C.I.J..

⁷⁴ Alina Kaczorowska, *Public International Law*, 4th edition, Routledge ,p-149

⁷⁵ Martin Dixon, *Textbook on International Law* ,5th edition, Oxford University Press,p-82

⁷⁶ 21 BLD (2001) AD, at p 69

⁷⁷Why Do All States, Weak and Strong, Mostly Obey International Law? HEATH PICKERING, E-international Relations Students, FEB 4 2014, <http://www.e-ir.info/2014/02/04/why-do-states-mostly-obey-international-law/>

⁷⁸ Ali Imman. *Towards a justice delivery system for children in Bangladesh, a guide and Case law on children in conflict with the law*, p- 31. Accessible at: <https://www.blast.org.bd/content/publications/The-Children-Act%202013.pdf>

vehemently declared, “ Our court will not enforce the Covenants as treaties and Conventions even if ratified by the State, as they are not part of the *corpus juris* of the State unless those are incorporated in the municipal legislation.”

Therefore, it is evident that the Bangladesh Supreme Court took the pure dualist approach towards the implementation of international law.⁷⁹ It is also evident above that, in fact, codified statutes are also playing a predominant role in the same legal system as seen in many decisions of the court. So it can be said that judiciary of Bangladesh applies a mix of features from both common and civil law.

When a country signs and ratifies treaties or international conventions, it is to be bound by mutual agreement to the terms of these documents. The point is that, international law is not imposed on Bangladesh against its will by an external legislature. Therefore, Bangladesh is in a commitment that it has already decided its interest to comply with. In the light of binding legal obligation that CRC imposes and the absence of comprehensive legislative reform being undertaken by the Government of Bangladesh, the question arises whether the CRC can be relied upon in Court.⁸⁰ International law is not ipso facto part of national law.⁸¹

This means that, international law does not upon ratification become automatically effective and cannot be directly invoked in the Court. Despite the reluctant judicial mind, there are many cases where the Supreme Court showed respect to the international law by giving an interpretation in accordance with the international norms and principles.

2.3. The recent attitude of the of Judiciary of Bangladesh

Like many other jurisdictions, Supreme Court of Bangladesh condemned violence against children, the ethos of the CRC in its judgments. The judicial use of international law at national courts is being increasingly seen and recognized around the world. In order to mitigate the

⁷⁹ 14 BLC (2009), HCD, para 45 P 703. Accessible at: https://www.researchgate.net/publication/312032430_Application_of_International_Law_in_Bangladesh_An_analysis_of_the_Supreme_Court_Judgments (p-8)

⁸⁰ Supra note,77.P-31

⁸¹ Dixon Martin. Textbook on International Law, 5th edition, Oxford University Press,pp-87-88.

problems emerges from the dualist approach where unincorporated international law cannot create an enforceable obligation; the judiciary of Bangladesh delivered a historic judgment in 2011 showing the ultimate respect to the international law.

In July 2010 Bangladesh Legal Aid and Services Trust⁸² and Ain o Salish Kendra filed a writ petition with the High Court in Dhaka. In the case of Blast v Bangladesh the application was filed as public interest litigation under 102 of the Constitution of Bangladesh alleging, the Government of Bangladesh for abuse and failure to comply with statutory and constitutional duties to investigate allegations of Corporal punishment. In the ruling, Supreme Court of Bangladesh High Court Division called for the prohibition of corporal punishment in all settings and directed the Government to consider amending the Children Act 1974 to make corporal punishment an offense for parents (and employers) to impose corporal punishment on children. The Reasoning of the Supreme Court is as follows:

“The Court noted that Article 35, Clause 5 of the Constitution, which deals with trial and punishment, provides that “no person shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment” and reasoned that if any person is protected from such treatment after conviction of a criminal offence, then a child should not be subjected to such punishment for behavior which does not even amount to a criminal offense.

Looking in part to the Convention on the Rights of the Child, the Court emphasized that abuse has serious physical, psychological and emotional effects, causes truancy and children to drop out of school, and therefore “exacerbates the cycle of illiteracy and poverty.” The Court noted that corporal punishment was not in fact authorized as a form of discipline under the Penal Code and that regulations of schools did not provide for corporal punishment. In light of the CRC, the Court then went on to hold that not only was corporal punishment not authorized in education, it must be prohibited in all settings including schools, homes and places.

⁸² BLAST and ASK vs. Bangladesh and others (Corporal Punishment in Educational Institutions’ Case), Writ Petition No. 5684 of 2010. High Court Division of the Supreme Court of Bangladesh
Accessible at: <https://www.blast.org.bd/>

As such, the Court detailed steps to be taken by the Government to enact a blanket ban on corporal punishment. The Court directed the Ministry of Education to categorize corporal punishment as “misconduct” for all teachers at public and private schools and make any teacher imposing this punishment subject to a disciplinary proceeding.

The Court noted that a teacher imposing corporal punishment would also be liable under existing criminal law and directed the Government to consider amending the Children Act, 1974 in order to make it an offence for parents and employers to impose corporal punishment upon children. The Court stated its view that any laws that allow corporal punishment of children or any other persons should be repealed immediately because they are in contravention of the fundamental rights set forth in the Constitution.”⁸³The Honorable court found that corporal punishment constitutes a violation and therefore ordered that the practice be prohibited not only in schools but across all settings.⁸⁴ Unfortunately, The Children Act 2013,⁸⁵ which repeals the Children Act 1974, failed to achieve this as the Act does not explicitly prohibits corporal punishment.

According to Articles 103(2) (a) and 110, the Constitution of Bangladesh, 1972, Bangladesh Supreme Court has the power not only to interpret the Constitution and the laws made by the Parliament, but it can also declare them null and void when they are found inconsistent with any of the provisions with any of the Constitution and to enforce the fundamental rights of the citizens.⁸⁶

In addition, the law declared by the Appellate Division, the apex court of Bangladesh shall be binding on the High Court Division and the law declared by either division of the Supreme Court shall be binding on all courts subordinate to it.⁸⁷In practice, the Appellate Division of Bangladesh

⁸³ The reasoning of The Court will be Accessible at: <https://www.crin.org/en/library/legal-database/blast-v-secretary-ministry-education-and-others>

⁸⁴ Ibid.

⁸⁵ http://bdlaws.minlaw.gov.bd/bangla_pdf_part.php?act_name=&vol=%E0%A7%AA%E0%A7%A9&id=1119

⁸⁶ Articles 7(2) and 44, the Constitution of Bangladesh. Accessible at: http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=367.

⁸⁷ Article 11 of the Constitution of Bangladesh. Accessible at: http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=367. Accessed on 23-09-2018

gives effect to the domestic law and not to the instruments of international law, where there is a clear and specific domestic legislation on the disputed issue.

The answer of the second question requires a brief discussion of the laws relating to children in Bangladesh where the age limit if the child varies which is a significant obstacle for implementing the children's right in most of the cases.

2.4. The laws relating to children in Bangladesh

The Constitution of the People's Republic of Bangladesh provides selected provision regarding children general. Laws concerning children generally include, The Majority Act, 1875, The Contract Act, 1872, The Partnership Act, 1932 and many more. Likewise, laws concerning offenses against children are, namely, The Penal Code, 1860, The Nari O Shishu Nirjatan Daman Ain, 2000, The Acid Daman Ain, 2002, The Human Trafficking Deterrence and Suppression Ordinance, 2011.⁸⁸

Also, Laws concerning children at criminal justice system, includes, The Penal Code, 1860, The Code of Criminal Procedure, 1898, The Railways Act, 1890, The Whipping Act, 1909, The Evidence Act, 1872, The Prison Act, 1894, The Prisoners Act, 1900, The Bengal Jail Code 1920, The Probation of Offenders Ordinance, 1960 etc.⁸⁹ Besides, there are laws Governing Personal & Family Affairs Including Property Affairs, laws Concerning Children's Health and Public Morality, laws Concerning Education and Cultural & Social Welfare of Children laws Concerning Children's Access to Justice. The children policies include, The National Children Policy, 2011, The National Child Labor Elimination Policy 2010, etc.

In Bangladesh laws available relating to Children are diverse and dissimilar. Therefore, various Acts of Parliament are often defines a child from numerous dimensions. Article 1 of the CRC defines a 'child' as a person below the age of 18 unless the laws of a particular country set the

⁸⁸ Haque Ridwanul. In the Best Interest of Children: Laws and Policies Concerning Children in Bangladesh. UNICEF For Bangladesh.

⁸⁹ Rahman G Samsur. Laws Relating to Children In Bangladesh. 2nd Edn. Bangladesh Shishu Academy, 1994.

legal age for adulthood younger. According to section 4 of the CA 2013 that "Notwithstanding anything contained in any other law of different, for the purpose of this Act, under 18 (eighteen) years of age and all persons shall be treated as children."⁹⁰ The definition of 'child' was amended from 16 (replacing the definition of 1974 Act) to 18 in the CA 2013. There are other laws which are in line with the CA 2013 for recognizing the age of majority as 18 years, such as, Majority Act, 1875 (Section 3); the Penal Code, 1860 (Section 305).

Moreover, there are statutory provisions that consider the age of majority or recognition of child higher than the age of 18 years. For example, the Citizenship Act, 1951 provides minor means any person who has not completed the age of twenty-one years. (Section 2); The Code of Criminal Procedure, 1898 refers to deal with juvenile delinquency up to the age of 21 years (Sections 399, 562.); The Child Marriage Restraint Act, 1929 states that Child means a person who is a male is under 21 years of age and if female is under 18 years of age and under the Bengal Jail Code, 1864 a prisoner under the age of 21 is considered a juvenile (Rule 962).⁹¹

The complexity arises when the definition of the 'Child' provides age limits lower than sixteen years of age. The Divorce Act, 1869 provides minor children means in the case of sons of father boys who have not completed the age of 16 years and girls who have not completed the age of 13 years making the age of majority at a lower age limit. The Mines Act, 1923 defines Child as a person who has not completed his 15 years. The Dissolution of Muslim Marriages Act, 1939 provides before she attained the age of 15 years repudiated the marriage before attaining the age of 18 years (Section 3). The Prisons Act, 1894 provides those under 16 years are to be firmly kept separate from all others (Section 27). The Juvenile Smoking Act, 1919 prohibited the sale of tobacco and related products to juveniles under the age of 16 years (Section 3) leaving the children between 16 to 18 out of the protection.⁹²

⁹⁰ For translation see, Porosh Hasan Rizvi. Notes on Child Act 2013 Bangladesh. Accessible at: https://www.academia.edu/30202509/Notes_on_Children_Act_2013_of_Bangladesh

⁹¹ Bhuiya Shafiul. Convention of the Rights of The Child 1989: Bangladesh Compatibility and Gap Analysis. Policy Advocacy and Legislative Reform for Children Project Legislative and Parliamentary and Affairs Division. Ministry Of Law, Justice and Parliamentary affairs, 2016. P-20.

⁹² Ibid.

The Nari o Shishu Nirjaton Domon Ain (in Bengali), 2000 provides a child is a person under the age of 14 years (Section 2 (K)). Section 2(a) of the Child Marriage Restraint Act defines a child and a minor if a male is under 21 and a female is under 18. The Bangladesh Labor Act, 2006 section 2(8) says child means someone who has reached the age of 14 years but has not reached the age of 18 years. The Vagrancy Act, section 2(3) provides that a child means a person under the age of 14 years. The relevant act to determine the age of majority is the Majority Act of 1875, where it is stated in section 3 that, a person shall be deemed to have attained his majority when he shall have completed the age of eighteen years. In the case of children who come into contact with the law, the relevant definition is taken into account the case to case basis. It is noted that the CRC allows the lower age of children 18.⁹³

2.5. Provisions legitimizing CP in Bangladesh

As mentioned in the introduction CP in Bangladesh is legalized by several Acts passed by the Parliaments. There are many Acts and Statues where it is clearly evident, for example, article 89 of the Penal Code 1860 states: “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 to be known by the doer to be likely to cause to that person.”

This provision is used as a defense of corporal punishment at home, school, and alternative care settings and daycare. Legislation governing care institutions reportedly provides for CP as a disciplinary measure, but we have no specific details. Also, provisions against corporal punishment in the Domestic Violence Act 2010 were not interpreted as prohibiting corporal punishment in childrearing. The CA 2013 provided the duties and responsibilities of a police officer, enforcement officer, service provider, shelter homes and medical services providers. It also failed to define domestic violence comprehensively differentiate domestic violence offense and family agony.

⁹³ Ibid.

In Bangladesh, sentences of whipping or caning are still being imposed on children in penal systems as corporal punishment is lawful as a disciplinary measure. Apart from the penal institutions, violent punishments are authorized in certified institutions, approved homes, prisons and vagrant homes in Bangladesh. Children Rules 1976(Rule No.24) imposes “canning not exceeding ten stripes” as sanctions for infringements of discipline. It also allows strokes on buttocks or the palm in the presence of a medical officer. As seen above, The Prison Act 1894⁹⁴ authorizes whipping as a punishment for breaches of discipline by male prisoners, up to 30 stripes. Also, under section 53 provides provision for boys under 16 which must be inflicted “in the way of school discipline,”

In addition, corporal punishment is also lawful in Bangladesh as a sentence for the crime for males. Moreover, under the Code of Criminal procedure 1898, boys under 16 may be whipped “with a light rattan not less than half an inch in diameter” up to 15 “stripes,” older males up to 30 stripes. Although Penal code 1860 does not provide for judicial whipping, the Whipping act 1909⁹⁵ allows whipping instead of or in addition to the punishments specified in the Penal Code for specific offenses committed by persons over 16. Again, Cantonments Pure Food Act 1966 and for boys under the age of 12, the Railways Act 1890⁹⁶ authorizes whipping as a sentence for offenses.

The Constitution of the People’s Republic of Bangladesh categorically prohibits torture or any cruel, inhuman or degrading punishment or treatment. Although Article 35 of the Constitution of Bangladesh protects arrested and detained persons from torture, cruel, degrading and inhuman treatment but states that this provision “shall not affect the operation of any existing law which prescribes any punishment or procedure for trial.

The CA 2013 does not explicitly prohibit the practice of judicial corporal punishment, nor does it repeal the provisions in other legislation that permits the practice. It includes the offence of child cruelty (art. 70), punishing “any person having the custody, charge or care of any child [who] assaults, abuses, neglects, forsakes, abandons unprotected, used for personal service causes

⁹⁴ Section 53

⁹⁵ Section 5.

⁹⁶ Section 130.

unnecessary suffering or such injury to his health that it leads to loss of the child's eyesight or hearing or injury to any of limb or organ of the body and any mental derangement", but it does not prohibit all corporal punishment.

Lastly, the final research question will be answered by viewing the current practice of CP in Bangladesh as it is socially accepted as the best interest of the child.

3. POSITION OF CORPORAL PUNISHMENT IN BANGLADESH

Countries like Bangladesh where corporal punishment is well-rooted in history, culture and religion. The main arguments in favor of CP are that, it teaches children positive behavior. In the socioeconomic condition of Bangladesh, violent “discipline” is the most common form of violence against children in Bangladesh⁹⁷ which silently violates the basic human right of the children. It is considered by most parents that, CP is an effective, socially acceptable childrearing method, as they have experienced it themselves as children.

Therefore, it is not viewed negatively and thoroughly practiced in society as the most effective way to get kids to listen. CP is practiced in every setting in Bangladesh. Not only parents CP also is also commonly used by the teachers, neighbors, employers, care givers and even by friends. In the family settings, perpetrators may include parents, step-parents, siblings, other family members and also caregivers.

There are various reasons for the prevalence of harmful practice to exist in society. Although Bangladesh is a secular country according to its constitution, over 90% of its population practices the religion of Islam. Among many reasons, it is found that CP has strong ties to religion like Islam and Christianity.⁹⁸ Sparing the rod might spoil the child in future was stated in their religious scriptures in both the religions. The other reasons are the poor economic condition, illiteracy, cultural factors etc.

3.1. The prevalence of CP at home and schools

At home, parents hit their children because they believe that corporal punishment teaches children positive behavior.⁹⁹ In various cases, the barbaric use of parental authority acts as a silent killer at home whether accepted as tradition or disguised as discipline. The most frequent

⁹⁷Khondakar Laila. Violence in the name of discipline, April 27, 2017. Accessible: <http://www.thedailystar.net/opinion/human-rights/violence-the-name-discipline-1396855>.

⁹⁸ See Generally, Greven Philip. Spare the Child: The religious roots of the punishment and the psychological impact of physical abuse (1991).

⁹⁹ Protecting Children Against corporal Punishment, Awareness raising campaign, Council of Europe publishing, p-23

form of corporal punishment is slapping, and the most common forms of punishment used by parents are beating with a stick, cane or whip, pinching, pulling the hair ears, slapping the face and head, kicking and punching, pushing and shoving the child. Depriving children of food is also practiced by some of the parents. The most common types of psychological violence experienced by these children include humiliation, threat, neglect, being ignored, ridicule, belittling, taunting, calling names, comparing with others, bluntly rejecting the child, witnessing violence, and discrimination.¹⁰⁰

In a study conducted in 2013 by the Ministry of Women and Children Affairs under the “National Initiative to End Violence against Children”(NIEVAC), involving 1,210 children and 1,165 adults,89% of children(88% of boys,90% of girls) said they are physically punished at home; 82% of adults said they physically punish their children at home. ¹⁰¹ It has been reported that in Bangladesh 82.3 percent children (1-14 years) experienced psychological aggression or physical punishment during one month.¹⁰²

Within the family setting several reasons are liable for initiating corporal punishment, for example, for not obeying their parents or their elders, talking back to their parents, not wanting to go to school, refusing to listen to their parents, being stubborn on any matter, not wanting to household work, going to places without taking permission of parents, telling lies, stealing, fighting with siblings or peers, not coming back at the right time, accidentally breaking household goods, smoking, spending night out. Parents also resorted to physical and humiliating punishment when there were complaints from stepmother, teachers or neighbors.

Likewise, children experience punishment due to the economic disadvantages, and family stress, and that increase the likelihood of parents to resort corporal punishment on their children. The

¹⁰⁰ Chowdhury Indrajit and Shoma Fahmida Jabeen. Participation of children on Parental practices, Save the Children Sweden 2008, Regional office for south Asia. Accessible at: <https://www.crin.org/en/docs/Perceptionpractices.pdf>. .
¹⁰¹ Ministry of Women and Children Affairs (2013), Baseline Report on Violence against Children in Bangladesh, Dhaka: Ministry of Women and Children Affairs). Assessable at: <http://www.endcorporalpunishment.org/wp-content/uploads/country-reports/Bangladesh.pdf>

¹⁰² Bangladesh Multiple Indicator Cluster Survey 2012-2013, Progotir Pathay: Final Report. Bangladesh Bureau of Statistics (BBS) and UNICEF Bangladesh, 2014, Dhaka, Bangladesh. Accessible at: https://www.unicef.org/bangladesh/MICS_Final_21062015_Low.pdf

severity of punishment increases with the perceived seriousness of the offense as felt by parents. Interestingly, physical punishment is less prevalent in the tribal community.¹⁰³

Similarly, CP continues to occur in schools throughout the world, both in countries where it is legal and countries where it is banned. Until 2006, in over 100 countries, children in schools suffer the reality or threat of State-authorized, legalized beating.¹⁰⁴ Although 102 countries in the world have banned corporal punishment in schools but in many cases the ban is not adequately enforced. It has been observed that CP in schools is a declining trend. Despite their more vulnerable status 149 countries that allow corporal punishment at homes and 69 countries that legally permit school punishment till 2017.¹⁰⁵

In Bangladesh, the most common form of punishment in school is hitting on the palm or other body parts with a ruler or stick. More than 3 in 4 were hit their palm, 3 in 5 were hit other parts of their body, close to 1 in 2 experienced slapping.¹⁰⁶ Corporal punishment was one of the top four reasons children gave for not attending school. The Project Director of the Protection Unit UNICEF says-“many of the dropouts children do not come to the school due to CP.”¹⁰⁷ The statement was also endorsed by another Report Card Survey on Primary Education in Eight Selected Unions of Bangladesh, Dhaka. Bangladesh conducted by Campaign for Popular Education (CAMPE) involving 24 government primary schools in eight unions of Bangladesh, found a drop in the prevalence of CP from 79% in 2013 to 53% in 2015.¹⁰⁸

¹⁰³ Supra note, 99.

¹⁰⁴ Global Initiative to End all Corporal Punishment of Children (2006). Global Summary of the Legal Status of Corporal Punishment of Children. Newsletter 29(December14), 28 June 2006. Accessible at: <http://endcorporalpunishment.org/wp-content/uploads/newsletters/Issue29-Dec2014.pdf>

¹⁰⁵ Elizabeth T. Gershoff (2017) School corporal punishment in global perspective: prevalence, outcomes, and efforts at intervention, *Psychology, Health & Medicine*, 22:sup1, 224-239, DOI: 10.1080/13548506.2016.1271955. Accessible at: <https://www.tandfonline.com/doi/full/10.1080/13548506.2016.1271955>.

¹⁰⁶ Quote from the Children’s Opinion poll 2013- “Teachers need to be aware of bad effects of corporal punishment” Source: Children’s Opinion poll 2009.

¹⁰⁷ The Financial Express, 15 March 2008.

¹⁰⁸ Corporal punishment of children in Bangladesh. Global initiative to end all corporal punishment on children. September 2018. Accessible at: www.endcorporalpunishment.org Child population 57,168,000 (UNICEF, 2015),p-8. See also, <http://www.endcorporalpunishment.org/wp-content/uploads/country-reports/Bangladesh.pdf>

The survey¹⁰⁹ results showed that the use of stick or cane in punishing children in school was still very high (87.6%). Physical punishment in schools ranged from hitting the palm with ruler/stick (76%), forcing children to stand in class (63%), hitting other body parts with ruler/stick (60%), slapping (49%), ear, hair or skin twisting (36%) and forcing children to kneel (25%). As far as pervasiveness, 53 per cent of students reported that ‘many to most’ schoolchildren suffer physical punishment, with 23 per cent stating that such punishment in school took place daily. About 7 per cent reported cuts or injuries to students due to physical punishment, with relatively high incidence in urban and slum areas and among boys 14 to 17 years old.¹¹⁰

Children are exposed to corporal punishment, cruel and humiliating forms of psychological punishment, sexual and gender-based violence and bullying in schools. Students are given punishment for not doing their homework, coming late to the class, sleeping in class, answering questions incorrectly, having an unacceptable appearance, using bad language, writing in a textbook, failing to pay school fees, making noise in class, and being absent.

UNICEF’s study titled “Corporal Punishment: Informal Interviews with Children about Corporal Punishment at school and Home” documents that teacher hit students with cane, sometimes pull their ears, or hair, or make them put their hand under the table, and some teachers put a pen between student’s fingers and squeeze their hands, sometimes they are made to stand on the bench and hold their ears.¹¹¹ Another study by UNICEF and Phulki-a national NGO-reveal that physical and psychological punishment is widely practiced in public schools and no explicit prohibition of corporal punishment has made under CA 2013 . Periodic Ministerial directives for stopping physical and mental punishment are often sent to school. Also school system with

¹⁰⁹ The survey was conducted under a joint project of the Ministry of Women and Children Affairs (MoWCA) and UNICEF. It is a follow-up to the Children’s Opinion Poll 2005. https://www.unicef.org/bangladesh/media_5664.html

¹¹⁰ Children’s opinion poll reveals widespread use of corporal punishment in school, home and workplace in Bangladesh Dhaka, 8 October 2009. https://www.unicef.org/bangladesh/media_5664.html

¹¹¹ Helal Mohiuddin, Amena Khatun, Masud Al-Kamal Corporal Punishment in Bangladesh School System: An Analytical Appraisal of Elimination Strategy Directions, ASA University Review, Vol. 6 No. 2, July–December, 2012.P-3. Accessible at -<https://pdfs.semanticscholar.org/f57a/d8b3d9b368e44c4612c32ceecd25ef9bd660.pdf>

Islamic religious curricula (Madrassahs), children are even chained even for the slightest offences.¹¹²

In Bangladesh, the law against child sexual abuse does not address sexual violence against children by family members. According to the survey¹¹³ children in poorer households and those with household heads with lower education levels are more likely to be severely punished at home-children aged 1-14 exposed to severe physical punishment, among them 29.7% poorest, 24.2% middle, 18.9% richest.

3.2 Corporal punishment in other settings

A vast majority of 65% of working children reported being punished, among them 25% was reported corporally punished.¹¹⁴ Although CP affects many millions of children who are working both legally and illegally, there are little data on violence against a child worker, especially those in the informal sector. In most cases, CP is inflicted by employers and perpetrators also include co-workers, clients, foremen, customers, and even police in some instances. In Bangladesh, the largest category for girls under 16 is domestic work which often takes the form of unregulated employment and employment and exploitation, and sometimes servitude or slavery. Most physical and psychological violence against child domestic workers is perpetrated by women (generally employers), but girls are often subject to sexual violence from male members of the family of their employer.¹¹⁵

¹¹² Helal Mohiuddin, Amena Khatun, Masud Al-Kamal, Corporal Punishment in Bangladesh School System: An Analytical Appraisal of Elimination Strategy Directions, *ASA University Review*, Vol. 6 No. 2, July–December, 2012.p-3. Accessible at: <https://pdfs.semanticscholar.org/f57a/d8b3d9b368e44c4612c32ceecd25ef9bd660.pdf>

¹¹³ Multiple Indicator Cluster Survey 2012-2013, Progotir Pathy Final Report, Government of the People's Republic of Bangladesh, Bangladesh Bureau of Statistics (BBS) Statistics and Informatics Division (SID), Ministry of Planning United Nation Children's Fund.p-164-165.

¹¹⁴ Children's opinion poll reveals widespread use of corporal punishment in school, home and workplace in Bangladesh Dhaka, 8 October 2009. Accessible at: https://www.unicef.org/bangladesh/media_5664.html

¹¹⁵ United Nations General assembly, Sixty-first session, Promotion and protection of the rights of children Rights of the child, Report of the independent expert for the United Nations study on violence against children. Accessible at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N06/491/05/PDF/N0649105.pdf?OpenElement>

Corporal punishment is not viewed as the act of violence in Bangladesh because it is endorsed at the State government level.¹¹⁶ Thousands of children mainly boys are at risk of violence from staff and officials responsible for their well-being in police lock-ups, prisons, juvenile detention facilities, and reform schools.¹¹⁷ Although Bangladesh made a significant development in CA 2013, there are many areas still need to be worked on. The adverse effects of Corporal punishment will also be discussed further.

Now the study will reveal the children's best interest of the child according to the convention and how it has perceived by the society in Bangladesh. The best interest principle as defined in Art. 3 of CRC contradict with the practice of Bangladeshi people in general as the best interest policy cannot be applied by harming a child.

3.3 Best interest of the child and cultural relativism

Article 3, para1 CRC is the basis for the best interest of the child which poses a principle: "The best interest of the child shall be a primary consideration." Within the convention the best interest is also mentioned in other articles, e.g., 9, 18, 20 and 21. Committee on the Rights of the Child highlights four core principles known as best interest principle, the right to life, survival and development, the right to non-discrimination and the right to participation.¹¹⁸ CP cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child's human dignity and right to physical integrity.¹¹⁹

The best interest principle has two significations. First, the best interest principle is also the fundament for a substantive right: the best interests will be assessed and determined as a primary

¹¹⁶ Global initiative to End all Corporal Punishment of Children. Save the Children: A handbook for work within religious community. Page -1, Accessible at: <https://resourcecentre.savethechildren.net/sites/default/files/documents/4420.pdf>, See also, www.endcorporalpunishment.org.

¹¹⁷ United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules") Adopted by General Assembly resolution 40/33 of 29 November 1985. Accessible at: <https://www.ohchr.org/Documents/ProfessionalInterest/beijingrules.pdf>

¹¹⁸ 20 years: The Convention of the Rights of the Child. Assessable at: https://www.unicef.org/rightsite/237_202.htm

¹¹⁹ General Comment No. 8, para. 26

consideration, whenever a decision is to be taken concerning a child or a group of children. Second, it's a rule of procedure. The State party has an obligation to put in place the mechanism to consider the best interest and has to legislate on the obligation made for the people who have to decide for children (judges, for example) to consider the "best interests" rule of procedure. It was explained if a legal provision is open to more than one interpretation which most effectively serves the child's best interest should be chosen.¹²⁰

The common argument against the prohibition of all CP is that a certain degree of "reasonable" or "moderate" corporal punishment is in the "best interest" of the child; therefore, the importance is broadly neglected. Besides, another argument could be that the best interest of the child will no longer be determined by the United Nations rather by the citizens of Bangladesh which will undermine the sovereignty of the country. For example, Although, USA drafted the Convention, it did not ratify the instrument believing that there is a threat of the superiority of the UNCRC for the US Government and the American citizens since the USA constitution is the supreme law of the land.

CA 2013 has expressly recognised the concept of 'best interest of the children in section 22(2); 25(2); 54(3), 54(4); 84(1); 88(1); 93(1). The principle of the best interest of the child was first underlined in Section 4 of the Guardians and Wards Act 1890 by using the term 'the welfare of a minor'. The Children Rule, 2016 requires that while implementing the CA 2013 and the Rules, the principle of 'best interest of children' have to be applied¹²¹. The CA 2013 categorically recommends for taking the 'best interest of children' into account while determining the most appropriate means and length of alternative care.¹²² Further to ensure 'best interest of children' CA 2013 recommends to the submission of all information preserved and received by the Probation Officer to the Child Welfare Board¹²³ who may for the best interest of the children send him/her issue to court for taking measures¹²⁴. Other provisions of the CA 2013 also contain

¹²⁰ CRC/C/GC/14,para.6 a,b.

¹²¹ Rule 3(a)

¹²² Sections 86, 88.

¹²³ Section 93

¹²⁴ Section 94

the notion of the requirement of considering the best interest of the children while taking actions or measure for them.¹²⁵

It was explained, if a legal provision is open to more than one interpretation which most effectively serves the child's best interest should be chosen.¹²⁶ Also, cultural or traditional values arguments are used as a justification for not implementing the minimum requirements set forth in the instrument. Cultural relativism is an approach that clarifies how 'human Values, far from being universal, vary a great deal according to different cultural perspectives. Cultural relativism is an approach that clarifies how "human values, far from being universal, vary a great deal according to different cultural perspectives."¹²⁷ The question remains that whether human values can be practiced in contradiction with the human rights set forth in the Convention?

Cultural relativist criticize the current international human rights system because as international norms imposes outside values upon the society. At least at the level of norm-creation there thus appears to exist a strong consensus among states as to the substance and universal applicability of the rights of the child. It might therefore have been expected that any continuing resistance to the transformative effects of the forces of globalization, modernization and development would be particularly strong when dealing with the crucial relationship between a child ,its parents, the wider family and the state.¹²⁸ Human rights proponents respond that their evaluation of cultural practices is based on universally accepted norms and, therefore, does not impose the views of outside¹²⁹

¹²⁵Bhuiya Shafiul. Convention of the Rights of The Child1989: Bangladesh Compatibility and Gap Analysis. Policy Advocacy and Legislative Reform for Children Project Legislative and Parliamentary and Affairs Division. Ministry Of Law, Justice and Parliamentary affairs, 2016. P-23.

¹²⁶ CRC/C/GC/14,para.6 a,b.

¹²⁷ Diana Ayton-Shenker, The Challenge of Human Rights and Cultural Diversity, United Nations Department of Public Information (March 1995), available at <http://www.un.org/rights/dpi I627e.htm>.

¹²⁸ A Comparative and international Journal of the Social Sciences, Humanities, and Law. Human Rights Quarterly. Vol. 25.No.1, 2003.The John Hopkins University Press, p- 135.

¹²⁹ Katherine Brennan. The Influence of Cultural Relativism on International Human Rights Law: Female Circumcision as a Case Study. Law & Inequality: A Journal of Theory and Practice. Volume 7 , Issue 3,1989.P-6. Accessible at:

In this respect, Committee states that the interpretation of a child's best interest must be consistent with the whole Convention, including corporal punishment and other forms of cruel or degrading punishment.¹³⁰ In other words the interpretation cannot be "culturally relativist" and deny the other rights of the CRC for example to protection against traditional practices and corporal punishments.¹³¹ In case of CP on children the degree of cultural relativism should be adopted only with considerable caution.¹³² Corporal punishment is not tolerated in Norway even if everybody else in that minority culture does the same thing.¹³³ Also, banning the corporal punishment does not breach family privacy of religious rights.¹³⁴

So the author submits that although the concept of best interest of the children is recognized in many Acts and statutes in Bangladesh, the concept is lack of its general application in other legislations.

There are numerous negative impacts of Corporal punishment on children, parents, and society. Children being vulnerable submit to violence that causes deep hurt in their emotional behavior. Corporal punishment not only affects the emotional behavior and academic performance of a child but also leads to a reduction in self-esteem and dignity of the child.¹³⁵ In addition, aggression breeds aggression, and consequently, they become violent adults in the future. Children subjected to physical punishment bully other children and siblings and eventually

<https://scholarship.law.umn.edu/cgi/viewcontent.cgi?referer=https://www.google.ee/&httpsredir=1&article=1460&context=lawineq>

¹³⁰ General Comment No.8, para 26

¹³¹ Said Mahmoudi (ed). Child-friendly Justice. A Quarter of a Century of the UN Convention on the rights of the Child. Stockholm. Studies in Child Law and Children's Rights. Brill Nijhoff.p-32

¹³² P-23, Citation: Lynne M. Healy, Universalism and Cultural Relativism in Social Work Ethics, 50 Int'l Soc. Work 11 (2007), https://heinonline-org.ezproxy.utlib.ut.ee/HOL/Page?men_tab=srchresults&handle=hein.journals/intsocwk50&id=19&size=2&collection=journals&terms=of%20cultural|cultural%20relativism|of|corporal%20punishment%20of%20children|of%20cultural%20relativism|cultural&termtype=phrase&set_as_cursor=0

¹³³ The Child's Interest in Conflict: The Intersections between society, Family, Faith and Culture . Maarit Jantera-Jareborg, eds. Cambridge, 2016. P-79

¹³⁴ P-9 green book

¹³⁵ Corporal punishments affect academic performance of a child, V.K. Vijayan, Professor, Institute of Mental Health, Kilpauk. The Hindu, February 11, 2008. Accessible: <https://www.thehindu.com/todays-paper/tp-national/tp-tamilnadu/ldquoCorporal-punishment-affects-academic-performance-of-childrdquo/article15162752.ece>

violent to their spouse. While growing up, they aggressively take part in anti-social behavior and commit violent crimes in society.

Along with the consequences mentioned earlier, psychological damage could lead to the anger issue of a child due to the confuse love with pain. They also feel lonely, unloved and abandoned. The humiliation and reduction of dignity lowers their self-esteem, teaches them to be repeated victims and promotes the negative expectation of them. Corporal punishment teaches violence is an acceptable way of solving problems by precluding dialogue and reflection and discourages reasoning. It hampers the learning process and intellectual development that manifest difficulties with social integration as they are often unable to cooperate with authority. Therefore, these harmful effects are the violation of Article 3 of the CRC.

The Government of Bangladesh (GoB) believes that empowerment of children through vindication of their rights in all spheres of life serves their best interest which led to the amendment of the 1974 Act. But until fairly recently, little-limited public and professional attention have been paid to the children at risk of being abused in the name of discipline. The CA 2013 does not even provide any word as ‘reasonable chastisement’. The author submits that the politicians are not enthusiastic enough to promote this concept as the people of Bangladesh have a negative attitude toward outside intervention in family issues. The legislature also believes that child-rearing practices are considered as the family’s own business, beyond the control of both state and politics.¹³⁶

It is argued that the CRC took over ten years to draft and was worked on by child’s rights experts who over the years had had considerable experience in the care of the children on the move and especially children who had been deprived of the care of their families in various situations. Thus, many principles contained in the CRC are those that have been arrived at by experience,

¹³⁶Similarities also found in Korean culture, Cane of Love: Parental Attitudes towards Corporal Punishment in Korea, Sonam Yang. The British Journal of Social Work, Volume 39, Issue 8, 1 December 2009, Pages 1540–1555, Published:29 March 2008.

<https://doi-org.ezproxy.utlib.ut.ee/10.1093/bjsw/bcn034>

<https://academic-oup-com.ezproxy.utlib.ut.ee/bjsw/article/39/8/1540/1625577>

research and practice.¹³⁷ So, it is suggested that, it of utmost urgency for Bangladesh to reconsider another amendment as soon as possible.

3.4. Developments towards international law

In order to understand the developments towards the implementation of its international commitments, recommendations by the Committee on the Rights of the Child will be discussed here. The author finds it important in order to formulate concrete recommendations to prohibit CP which will be discussed in later chapters. It has been observed from the concluding observations on an initial report given on 18 June 1997,¹³⁸ that:

“The committee is concerned at the lack of appropriate measures to combat and prevent ill- treatment and abuse, including sexual abuse, both within and outside the family, and at the lack of awareness and information on this matter. The persistence of corporal punishment and its acceptance by the society and instances of violence committed by law enforcement officials against abandoned or ‘vagrant’ children are matters of serious concern.”

Similarly in 2003, “The Committee expresses its profound concern at the prevalence of corporal punishment in schools, as well as the fact that corporal punishment is still legal and widely practised within the legal system, in educational and other institutions and in the family.”¹³⁹ Furthermore in 2009, “The Committee remains concerned about the ineffective implementation of existing laws to prevent corporal punishment and the existence of certain regulations in schools that permit forms of corporal punishment. Furthermore, the Committee is concerned that although the Constitution prohibits cruel, inhuman or degrading treatment, children continue to be a victim of corporal punishment and other forms of cruel and degrading treatment because of its acceptance in law and in society.”¹⁴⁰

¹³⁷ Jaap Doek, Hans van Loon and Paul Vlaardingerbroek. Children On the Move. How to Implement Their Right to Family life.p-134.

¹³⁸ June 1997, CRC/C/15/Add.74, Concluding observations on initial report, paras. 18 and 38

¹³⁹ 27 October 2003, CRC/C/15/Add.221, Concluding observations on second report, paras. 43, 44, 77 and 78

¹⁴⁰ 26 June 2009, CRC/C/BGD/CO/4, Concluding observations on third/fourth report, paras. 48 and 49

Lastly in 2015, “The Committee notes with the appreciate the information the information provided by the State party that the High Court Division of the Supreme Court has given a directive to ban corporal punishment of children and to enact a law to prohibit corporal punishment of children in all educational institutions and workplaces. However, the Committee remains concerned about the high number of cases of violence reported in families, schools, and institutions, alternative and care settings, day care penal institutions and a sentence of crime.¹⁴¹

From the above discussion, it is evident the country has developed very slowly towards the implementation of the Convention to the national level and the state practice regarding CP is still in contravention of the treaty provision.

3.5. Bangladesh on the prohibition of corporal punishment

In July 2006 meeting of the South Asia Forum on UN Study on Violence against Children, Bangladesh expressed its commitment to prohibiting all corporal punishment of children. This commitment was reaffirmed on 2009 and in 2018 during the Universal Periodic Review of Bangladesh.¹⁴² The National Children policy 2011¹⁴³ stipulates that “all forms of physical and mental punishment in educational institutions shall be prohibited, and a child-friendly system of imparting lessons be introduced so that the children and the adolescents do not have any physical and mental injury.” In 2003, the General Assembly in its Resolution 57/190,¹⁴⁴ an international study on the question of violence against children was requested. As a result, a questionnaire designed to obtain information for the United Nations Secretary General’s in-depth Study from

¹⁴¹ 2 October 2015, CRC/C/BGD/CO/5 Advance Unedited Version, Concluding observation on fifth report, paras. 38 and 39

¹⁴² Corporal punishment of children in Bangladesh. Global initiative to end all corporal punishment on children. September 2018. Accessible at: <http://www.endcorporalpunishment.org/wp-content/uploads/country-reports/Bangladesh.pdf>

¹⁴³ Government of Peoples Republic of Bangladesh, Ministry of women and Children affairs, February 2011. The global changes taking place, new and often arising needs and, in view of the recommendations of the UNCRC committee the government of Bangladesh has decided to prepare a modern and timely child policy by updating the National Child Policy adopted in 1994. The National Child Policy 2011 has been a far reaching vision in building the present and future of the children of Bangladesh. In making all national development policies, planning, program implementation and budgeting shall take into due consideration the contextual importance of the National Child policy 2011. Page-4. Accessible at: <http://ecd-bangladesh.net/document/documents/National-Children-Policy-2011-English-04.12.2012.pdf>

Governments was sent out to every member state.¹⁴⁵ From the response to the questionnaire received from the GoB, it has been observed that as a signatory to the CRC and its protocol the Government has made various efforts towards implementing the provision of the CRC addressing violence against children including corporal punishment. Prompt action has been taken to implement the CRC by the Government that formed a core Group after signing the CRC and its optional protocol.¹⁴⁶ It was done before the amendment of the Children Act of 2013.

As mentioned earlier that, the Supreme Court of Bangladesh issued a directive¹⁴⁷ to stop all forms of corporal punishment at educational institutions. Consequently, the Government of Bangladesh has issued a circular prohibiting all forms of corporal punishment at all educational institutions. Also, the Government has officially put in place the first 24- hour toll-free Child Helpline ‘1098’ to provide free telephone service to children facing violence, abuse and exploitation .Earlier, during the Piloting stage, this helpline received 25,907 calls from October 2015 to May 2016 and stopped 152 child marriages. During 2013 -2017, only a number of 1,205 children were reported to have been victims of violence such as murder, assault, abduction, pornography, trafficking, etc. The number of pending cases of violence against children is 1,060.¹⁴⁸ The total number of victims of corporal punishment parents and teachers are unknown.

Apart from maintaining a database on violence against children, one of the priority tasks of the Ministry of women and children affairs is to review the existing laws and policies pertaining to children and to propose suggestions for revision. One of the prominent NGO Bangladesh Nationals Women’s Lawyers Association (BNWLA) which operates a legal aid Cell under 26 local level legal aid offices directly giving legal aid to facilitate submission of complaints about

¹⁴⁴Resolution adopted by the General Assembly, On the report of the Third Committee (A/57/552) 57/190. Rights of the child .Accessible

at:https://www.iom.int/jahia/webdav/shared/shared/mainsite/policy_and_research/un/57/A_RES_57_190_en.pdf

¹⁴⁵ The United Nations study on Violence against Children. United Nations Human Rights. Office of the High Commissioner. Accessible at:<https://www.ohchr.org/en/hrbodies/crc/study/pages/studyviolencechildren.aspx>

¹⁴⁶ The United Nations study on Violence against Children. Response to the questionnaire received from the Government of BANGLADESH. Accessible

at:<https://www.ohchr.org/Documents/HRBodies/CRC/StudyViolenceChildren/Responses/Bangladesh.pdf>

¹⁴⁷ BLAST V. Ministry of Education of Bangladesh, WRIT PETITION NO. 5684 OF 2010. Accessible at: http://www.askbd.org/web/wp-content/uploads/2012/08/corporal_punishment.pdf.p-20.

¹⁴⁸ Accessible at: <https://documents-dds->

[ny.un.org/doc/UNDOC/GEN/G18/050/26/PDF/G1805026.pdf?OpenElement.p-15](https://documents-dds-nu.un.org/doc/UNDOC/GEN/G18/050/26/PDF/G1805026.pdf?OpenElement.p-15)

the violence of children. In 2002 the Government established “one-stop centers” in the medical colleges in two major districts where both adult and child victims of violence receive medical treatment through legal aid.

The GoB initiated a training program on child rights to the relevant officials who are responsible for the implementation of law relating to children. There is no leading government authority is responsible for violence against children in Bangladesh. Ministry of Women and Children Affairs is implementing a project named Empowerment and Protection of Women and Children funded by UNICEF, which is conducting a study on ‘Child abuse’ to assess the present situation of the violence against children. In addition, Bangladesh television and government operated radio program on “child development” on a weekly basis. Also, the media personnel including reporters and publishers from print and electronic media are given training on child rights.

Besides, Bangladesh is also committed to its regional organization of Bangladesh is a member of SAARC¹⁴⁹ and in solidarity with the members of SAARC, it is an obligation for Bangladesh challenging the legality and social approval of corporal punishment on Children. The SAARC apex body is known as South Asia Initiative to End Violence against Children (SAIEVAC) which launches the first ever inter-governmental campaign against corporal punishment in South Asia.¹⁵⁰ One of the main objectives of this inter-governmental body is to move forward and coordinate a regional Campaign to end the legality and practice of corporal punishment.¹⁵¹ So Far this organization raised a campaign on how to reform the law towards prohibiting corporal punishment.

In November 2010, The Government representatives in SAIEVAC developed a national plan to achieve prohibition developed during the law reform workshop in Kathmandu. It was confirmed that there are a number of laws authorizing CP and a comprehensive review of the legislation is necessary. The plan is divided into four steps: step one requires the existing legislation; step two

¹⁴⁹ South Asian Association for Regional Cooperation (SAARC). Accessible at: <https://www.nti.org/learn/treaties-and-regimes/south-asian-association-regional-cooperation-saarc/>.

¹⁵⁰ This regional pioneer initiative driven by the commitment of South Asian governments- Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka- strongly engages a wide-range of stakeholders including Governments, children, INGOs, UN Agencies and civil society organizations. Accessible at: <http://www.saievac.org/about-saievac/who-we-are/>

¹⁵¹ Regional campaign against corporal punishment of children; Equal protection for children, Accessible at: <http://www.saievac.org/cp/the-campaign>

requires repealing the existing law that authorizes corporal punishment, clear and explicit prohibition and lastly appropriate responses and sanctions to address the continued used of corporal punishment. The plan outlined in detail the following progress of law reform though did not specify a starting date.¹⁵²

In 2011, they endorsed a report on progress towards prohibiting corporal punishment in the South Asian States which included an analysis of the reforms required in Bangladesh.¹⁵³ It was also noted that the Children Bill would explicitly prohibit Corporal punishment in care institutions and educational institutions. The Bill is still under discussion. The Ministry of Women and Children Affairs¹⁵⁴ is involved in SAIEVAC activities and aimed at prohibiting corporal punishment in all settings.

¹⁵² Regional Campaign against Corporal Punishment of Children. Equal Protection for Children. How to reform the Law to towards Corporal Punishment? Accessible at: <http://www.saievac.org/cp/how-to-reform-the-law-towards-prohibiting-corporal-punishment>

¹⁵³ Prohibition of corporal punishment of children in South Asia: a progress review, Accessible at: <https://mowca.gov.bd/site/page/27caedab-d625-4f30-93f6-4e4029be5eb4/About-Ministry-of-Women-and-Children-Affairs.p-29>

4. MEASURES OF IMPLEMENTING THE CRC

Legal measures of CRC incorporation include direct incorporation of CRC in the domestic law at either legislative or constitutional level. On the other hand, indirect incorporation, i.e. by transporting relevant provisions of the CRC into the law of the relevant sector was not found in CA 2013 regarding CP.¹⁵⁵ According to Art. 4 of the Convention, “States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present convention.”¹⁵⁶ In other words, the State parties to the CRS must have a legal framework that is both effective and compatible with the CRC, and that ensures that rights the Convention vests in children are fully enforceable under national laws. In this case, anything less than an outright ban implies that some forms of CP are still acceptable in the legal system.

Any national strategy for the elimination of corporal punishment has to include a combination of both short and long-term measures. Short-term measures including legal reform to prohibit all forms of corporal punishment and longer-term measures to influence social attitudes and promote positive alternative methods of relating and communicating could be initiated. On the basis of that, the author suggests the following recommendations for Bangladesh. The overall recommendations are addressed to the legislative, administrative, judicial functions along with civil society organizations, media and relevant sectors of the society.

4.1. Legal incorporation

The Convention has become binding on Bangladesh through ratification. As the corporal punishment constitutes non-compliance, the current laws of Bangladesh mentioned above do not comply with the intention of the CRC, so as a party to the convention the country must amend its law in order to comply with its commitment to the international community fully. Art.4 of the CRC sets out the general measures of implementation that states are required to undertake to

¹⁵⁵Laura Lundy, Ursula Kilkelly, Bronagh Byrne, Jason Kang (et al). The UN Convention on the Rights of the Child: a study of legal implementation in 12 countries. UNICEF, United Kingdom. P-3 Accessible at: <https://www.qub.ac.uk/research-centres/CentreforChildrensRights/filestore/Fileupload%2C485596%2Cen.pdf>

¹⁵⁶Children and Corporal Punishment: “The Right not to be hit, also a Children’s Right”. Commissioner of Human Rights. Council of Europe .Accessible at: <https://rm.coe.int/children-and-corporal-punishment-the-right-not-to-be-hit-also-a-childr/16806da87b.p-10>.

implement all the rights in the CRC, including the area of legislative reform. It can be further reiterated that UN Committee on the Rights of the Child favors the direct and full incorporation as the method of incorporation, thus giving the full legal effect to the binding commitments made by the government when ratifying CRC.¹⁵⁷

As a matter of highest priority Bangladesh should prohibit all forms of violence against children, in all settings, including corporal punishment as required by the CRC as recommended in articles- 19,18 (2)and 37. In order to eliminate and eradicate CP in all settings a legal reform explicitly prohibiting CP is essential. All provisions should be repealed that allow even “reasonable” degree of corporal punishment.¹⁵⁸

In this respect, an example can be taken from Canada as the penal legislation allowing corporal punishment of children by parents and teachers. In its most recent report to the Committee, Canada stated that it was reviewing s43 of its penal legislation.¹⁵⁹ In the light of the confirmation by the Supreme Court of Canada in *Baker v Canada*¹⁶⁰ that the values reflected in international human rights conventions that have been ratified by Canada may be used as an aid to the interpretation of domestic status and the Charter.¹⁶¹

In addition, State should ensure that no person below 18 years of age should be subjected to the death penalty. Also, Bangladesh should take all necessary steps/measures to immediately suspend the execution of all death penalties imposed on persons for having committed a crime before the age of 18 and convert them into penalties in conformity with international human rights standards. Along with new amendments which include the language abolishing the corporal

¹⁵⁷ Laura Lundy, Ursula Kilkelly, Bronagh Byrne, Jason Kang (et al). The UN Convention on the Rights of the Child: a study of legal implementation in 12 countries. UNICEF, United Kingdom. P-3 Accessible at:<https://www.qub.ac.uk/research-centres/CentreforChildrensRights/filestore/Fileupload%2C485596%2Cen.pdf>

¹⁵⁸ Eliminating corporal punishment: a human rights imperative for Europe’s children. The Council of Europe programme” Building a Europe for and with children”. 2nd edition. Council of Europe publishing.

¹⁵⁹ Concluding observations of the Committee against Torture: Canada 26 June 1993, A/48/44,para 307.

¹⁶⁰ Baker v Canada [1999] 2 SCR 817.

¹⁶¹ Andrew Bainham,(ed). The international Survey of family Law. Jordan Publishing Limited (2003 edition), Bristol.p-89.

punishment and providing/incorporation punishment for the perpetrators, the country should educate its citizens as a whole about the detrimental effects of corporal punishment.

Furthermore, the mechanism for reporting the legal violation is complicated, and in this case, the government support is of at utmost importance. Bangladesh government must ensure that the laws relating to this complaint procedure are vigorously enforced. Also, Bangladesh should develop a systematic legal framework with a realistic time frame coordinated by an agency with the capacity to involve multiple sectors to address this issue. National laws, policies, plans and programs should fully comply with international human rights and current scientific knowledge.

4.2. Non legal incorporation

Keeping in mind the non-progressive situation the author proposes some non-legal measures for Bangladesh. Non-legal measures for implementing the CRC rights include policies and budgetary allocation in the relevant sector and monitoring national strategies and action plan for the children, the establishment of children's ombudspersons, child rights training, awareness raising for all those working with children.¹⁶² On the basis of the complicated legal procedure and other drawbacks, the author suggests a first step to outlaw the practice and educate its citizens through an awareness campaign simultaneously. The government should focus on its goals by changing the view towards the traditional practices for the best interest of the children. This causal connection between the ban and the trend can be informative and inspiring for Bangladesh. Otherwise, the campaign might be interpreted as an unwelcome and unauthorized intrusion into the society.

¹⁵⁰. Supra note 145,p-3.

In 2006, a strategy was suggested in the Commissioner's issue papers (updated on 2008)¹⁶³ which include the following/several steps which could be followed by Bangladesh as a guideline. According to that, firstly, Bangladesh should review existing legislation to ensure the effective prohibition of all corporal punishment. Secondly, awareness-raising among parents and professionals working with children about the rationale for abandoning corporal punishment as a form of discipline in the home and in institutions-this could include information on legal reform against corporal punishment in other countries and in positive effects; Thirdly, educating children about their rights including the right to be treated with respect.

This should be part of the school curriculum but also be disseminated through the mass media; clear guidance to teachers and school staff, health personnel, social workers and other key professionals on their role in preventing such violations and how to respond in concrete situations when there are indications that a child may suffer violence and need help. Fourthly, an agency should be created who will research in order to develop a better understanding of the magnitude and nature of the practice and to identify groups of children a particular risk. Most importantly, parenting education courses should be initiated on child-rearing practices. One way "save" children was to change their families' values and behaviors through direct intervention.¹⁶⁴

Furthermore, parents and children should be involved in discussions regarding non-violent forms of discipline in homes, schools and institutions. Besides, the government of Bangladesh could follow the model of Estonian family policy to regulate the welfare of the parents and children which includes, providing support and counseling, benefits and allowances, social insurance, parental vacation, etc. ¹⁶⁵

School personnel should be educated that corporal punishment is not only an effective method of disciplining the children but also there exist many viable alternatives. While prioritizing the

¹⁶³ Issue Papers are commissioned and published by the Commissioner for Human Rights for the purpose of contributing to debate or further reflection on a current and important human rights matter. The Issue Papers are available on the Commissioner's web-site: www.commissioner.coe.int.

¹⁶⁴ F.Jane Nasbaum .Working with the Courts in Child Protection. The Circle, Inc., Mclean,VA.p-3

¹⁶⁵Kutsar. Dagmar (ed). Children in Estonia , United Nations,Tallinn,2000.p-76.

groups, school administrators can be put in the first place for example. The Ministry of education can structure a specific training module for the teachers as well as for the teachers for the abolition of the corporal punishment. Also, the Ministry of education should initiate a training program of counseling and alternative methods to correct behavior that will also include listening and talking to the children to imply positive discipline. The challenges of human rights education must be researched thoroughly as a primary consideration.

Educating the school staff will create an enjoyable learning atmosphere for students. In order to create a friendly learning environment adequate recruitment of teachers is crucial that will ease their large classroom pressure. In addition, a special program designed for teachers and parent can be beneficial to address this issue of the harmful consequences of corporal punishment. Furthermore, children rights protection laws should be included in the university syllabus for the law courses and other professional courses for ensuring better awareness.

A structured mechanism, for example, Child Right Commission should be established for the protection and the promotion of the child rights. Also, the teachers' accountability should be increased the awareness of children about their rights regarding the CP. Save the Children UK ¹⁶⁶ advocates the following recommendations which can be taken as a model for Bangladesh. For example, identifying the underlying causes behind the use of corporal punishment, ensure that legal reforms are implemented throughout the education system, dismissal and the prosecution of the teachers; stimulate the collaboration of children with the parents, teachers in generating awareness raising debates etc.

The movement of banning corporal punishment should spread corporal punishment to the parents. The success of the school will also eventually eradicate the practice from home. Ideally, if the parents are introduced to the positive impact of the alternative discipline and the negative

¹⁶⁶ Save the Children Sweden 2001. "Corporal punishment of children and change the attitudes – a cross cultural study" Save the Children UK 2001. "Ending corporal punishment of children" London: Save the Children. Corporal Punishment in Bangladesh School System: An Analytical Appraisal of Elimination Strategy Directions. Accessible at:
https://www.researchgate.net/publication/264626942_Corporal_Punishment_in_Bangladesh_School_System_An_Analytical_Appraisal_of_Elimination_Strategy_Directions

consequence of the corporal punishment on the future of the country, parents will be more open to the idea.

Unlike many developed countries supporting parents and parenting by reducing poverty, stress will be difficult at the initial stage. As a starting point, a pilot program can be introduced that will ensure child rearing education leading to positive and nonviolent forms of discipline.¹⁶⁷ The other methods could include advice counseling and advocacy services for changing parental attitudes and developing positive parental skills. Bearing in mind the prevention and prohibition in law should not lead to the prosecution of the parents for using CP as a disciplinary method. English Children Act 1989 now encourages about parental responsibilities, not the parental rights. The Act does not mention the issue of parental responsibilities.¹⁶⁸ Like many other countries “spank out day” can be celebrated promoting the concept that hands are not for hitting. Simultaneously, effective protection should be monitored.

For the NGO’s public information campaign can be carried out through media, e.g. television and radio advertisements. Also, press, internet and outdoor (posters, billboards) advertisements, local debates, showing films and local activities-coalition with the child protection authorities can be initiated. NGOs should be invited to prepare a resolution on this issue during a workshop where children participated too.¹⁶⁹

Similarly, there are some news on the violent corporal punishment is published in the media both print and electronic media, the alternatives of this punishment has hardly been talked about. The long-sustained cultural approval also pointed out that such consciousness is still inactive due to lack of collective voices. Lack of mass media representation of CP as a ‘crime’ are responsible for government inaction as the print media also known as ‘culture-mirror.’ This study reveals

¹⁶⁷Eliminating Corporal Punishment: A Human Rights Imperative for Europe’s Children. The Council of Europe programme” Building a Europe for and with children”. 2nd edition. Council of Europe publishing. P- 103

¹⁶⁸. Katharina Boele-Woelki,(ed). Principles of European Family law Regarding Parenting Responsibilities. –Oxford, 2007.p-79

¹⁶⁹ Shirin Aumeruddy-Cziffra, Taking actions to protect children from violence. Celebrating Childhood: A journey to end violence against children.p-23. Accessible at: https://read.un-ilibrary.org/children-and-youth/celebrating-childhood_cdbed20a-en#page2

reader opinions that ‘cultural approval’ and ‘lack of mass media representation.’¹⁷⁰ Media seem to start to recognize CP as an offence recently. Needless to say that elimination of CP nowadays is dependent on large-scale media representation. Training programs for journalists encouraged the electronic and written media to develop a keen interest in the coverage of issues of violence while also understanding the ethical challenges of such reporting.¹⁷¹

4.3. The legal power of the Committee

Article 43 of the CRC establishes the Committee on the Rights of the child (the Committee); the highest international authority monitors the implementation of the CRC. The Committee is consists of 18 members elected by the State Parties to the Convention meets three times a year in Geneva.) . The States Parties must submit an initial report on progress towards on the measures they have adopted to give effect the Convention rights and the progress made on the enjoyment of those rights within two years of Ratification; then the periodic reports must be submitted every five years.¹⁷² The Committee has constantly stated¹⁷³ that legal and social acceptance of physical punishment of children, in the home, institutions and all other settings, is not compatible with the Convention.

Since 1993 the Committee has recommended the prohibition of physical punishment in the family, in all types of institution, care settings and as a sentence of the courts, together with nonviolent childrearing education. In examining states’ reports, the Committee signed out for criticism of national law that allows some level of violent punishment justified as “reasonable chastisement” or ‘moderate correction.’¹⁷³ The problem is that The Committee neither possesses judicial non quasi-judicial powers. Besides, the main purpose of the ‘General Comment’ is to

¹⁷⁰ The Children Act 2013: A Commentary by Justice Imman Ali Bangladesh Legal Aid and Services Trust. Accessible at:<https://www.blast.org.bd/content/publications/The-Children-Act%202013.pdf>

¹⁷¹ Supra note 157,p-123

¹⁷² Procedure of Reporting to the Committee of the Rights of the Child. Accessible at :<https://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIntro.aspx>

¹⁷³ Ending Corporal punishment of children.A handbook for working with and within religious community. Save the Children. Accessible at, <https://resourcecentre.savethechildren.net/sites/default/files/documents/4420.pdf.p-21>

assists and guide state parties to the treaties in preparing reports to be submitted to the Committee.

In addition, ‘Recommendations’ based on information received during the reporting process or from the other sources have no legally binding effect as Article 43-45 of the CRC is too vague. Furthermore, the ‘Concluding observations’ are not binding on the states either as they contain the suggestions for the full implementation of the rights. It has the breadth of this obligation has been emphasized by the Committee on the Rights of the Child.

Another reason on its behalf is that dualist country would not regard the provisions of international treaties as rules but would rather apply them as guidelines or principles. This would further mean that a dualist country would not regard the outcomes and recommendations of political dialogue with treaty bodies as binding.¹⁷⁴ As the judiciary cannot apply international law is not directly, the domestic institution and the individual cannot legally be the addressees of then international law.

4.4 Combat challenges to ban the Corporal Punishment

It is evident from Committees report that Ministry’s progress is slow in this respect. It is evident in the above chapters that the progression of legal measures of incorporation in Bangladesh is very slow since last 28 years. For this reason, the author suspects that the major barrier to stop in the school will be the non-communication of the Ministry’s circular to the schools in rural areas. As it is seen that, there is a general acceptance of the CP by the teacher in the society, it may be difficult to eradicate the practice completely. In the rural areas most teachers are unaware of the difference between corporal punishment and physical punishment, and therefore, the ban of all forms of corporal punishment in school has not been regulated properly.

After analyzing the author submits that there was no conclusive evidence which signifies that, the legislative of Bangladesh believe that the CRC overrides the parental rights by giving the autonomous right to children which prevented them from putting a total ban yet. Presumption can be made from the reports of the committee of the CRC that the parliament is avoiding that total

¹⁷⁴ Dr. Katree Luhamma, Research Fellow in Public international law, University of Tartu, School of Law, “Universal Human Rights in National Context: Application of International Rights of the Child in Estonia, Finland, and Russia”, Doctora thesis, June 2015.

ban with an apprehension that, it might give the children the fundamental right to rebel against their parents.

Furthermore, it was also not clear that why the CA 2013 did not reflect the judicial decision of 2011. The teachers and the parents are never in the same footings, so the public sentiments against the politicians would not do any harm if a ban was enforced in the educational institutions. USA one of the main drafters of CRC abstained from ratifying CRC because they believe that, the UNCRC grants excessive powers to State to interfere in families in the name of protecting children which is regarded as a threat to parental authority which can be shifted to the State. The similar intention of the Bangladesh parliament was not revealed in anywhere directly except the vague provisions of the Constitution regarding the treaty application.

The author asserts that not only the law but also the attitudes of the people, traditions should be changed simultaneously and that requires time. So, a joint movement of the general public, media, Ministry, educators should be connected to one movement against corporal punishment. The author suggests an example of Countries like Sweden which has legally banned corporal punishment, was only possible by changing the public opinion through educating the general public about the negative impact of the corporal punishment. In addition, with the abolition of the corporal punishment the rate of youth crime, alcohol and drugs abuse, rape and suicide will be decreased. Another significant development regarding the country's human rights obligation is that, since 2013, the Government of Bangladesh has not signed/ratified/acceded to any new international human rights instrument.

The government believes that before becoming a party to any international instrument, due consideration should be given to the capacity of national institutions to carry out the treaty obligations. The author is hopeful that, with the appropriate research and advocacy, the total ban of CP is possible. Bangladesh is a country of almost 170 million people and it will be an unrealistic task to educate the entire population at once.

CONCLUSION

The primary purpose of this thesis was to find out the reasons behind not incorporating the provisions of CRC in the national legislation in Bangladesh relating to corporal punishment on children. The research was required from the facts that, in Bangladesh, almost every day children's are brutally beaten up through corporal punishment since CA 2013 did not prohibit such action as a treaty obligation. It can be concluded that, in order to meet the requirements of CRC, although Bangladesh amended the Children Act 2013 repealing th1974 Act, nevertheless there is still lack of strict provisions and its punishment. Therefore, it has also been observed that the legal standard of Bangladesh on the violence against children through corporal punishment on children does not meet the international standards.

The first three chapters unfold the reasons for the additional questions that bring out the answer to the main research question regarding the impediments of transposing the international law into the domestic level. While analyzing the legal system of Bangladesh and the author discovered few complicated and vague provisions in the constitution in relation regarding the treaty application in the national level. As a dualist country the judiciary cannot imply the international treaties into the national legal system without being passed by the parliament. The author also tracked down the fact that, as Bangladesh has been following the common law doctrines, theories and traditions for long, the country's judges and lawyers rarely hold any bold attitude and approach in applying the principles and provisions of international law in domestic Courts.¹⁷⁵ The author also revealed that, although the Supreme Court of Bangladesh delivered the landmark judgment in 2011 banning the CP in all educational institutions the CA 2013 failed to include the CRC requirement.

In order to answer the second research, question the author tried to scrutinize the laws concerning children in Bangladesh. There are hundreds of Acts, Statutes, and policies regarding children with contradictory provisions which increase the complexity of the justice system because, in

¹⁷⁵ Alam S., Enforcement of International Human Rights Law in Domestic Courts, Dhaka, 2007, at p.100.[Secondary source- Hasnat, A., Using International Law in National Courts: Bangladesh Perspective, (2013), Bangladesh. Journal of Law, BILIA, 13:1&2.p -50] Accessible at: <http://www.biliabd.org/article%20law/Vol-13/Abul%20Hasanat.pdf>

case of children who come into contact with the law, the relevant Act is taken into account a case to case basis. By providing references from different Acts, the age limit of a child set out from 13 to 21 which are in contradiction of the definition of CRC as stated in art.1. It is also noted that the CRC allows the lower age of children than 18 years as per the State law permits. In this case, the author finds Art. 1 of the Convention is vague for implementing a uniform provision regarding the age limit of a child.

In continuation of the search, the author detects that corporal punishment is state authorized in Bangladesh like many other countries in the world. There are still many provisions in the law that allows corporal punishment on children in a different setting including family, school, workplace and other settings. The research also discovers that in order to obey its obligation towards the international community, Bangladesh has already amended the Children Act in 2013 replacing the Act of 1974 which was predated the CRC and was lack of many convention rights.

There is also a lack of the definition of the term ‘Corporal punishment’ and the punishment measures in the CA 2013. It was revealed that section 70 of CA 2013 uses the term cruelty to child and there was no mention of the term corporal punishment as such. So the author suggests the current legislation permitting CP to be amended by abolishing those contradictory provisions and inserting a proper definition of the term Corporal Punishment. Also, the government requires declaring a total ban on CP to meet the country’s international human rights commitments.

The last question reveals the factor that; there remains a significant gap between the law and its implementation to protect the best interest of the children due to the socio-economic context of Bangladesh. Study showed that there remains a clash between the social acceptance of the CP as disciplinary techniques which causes harm to the children and the definition of the CRC. The author also agreed that if the social practice does more harm than good and contradicts with the internationally accepted norms, it has to be abandoned for the better future and establishment of the rights of the child.

In addition, obstacle against the progressive and full realization of the Convention rights, the author explains it as the lack of appropriate policies and the will of the political leaders while answering the main research question. It is evident that, in the first two decades of its independence, there has been no comprehensive review of the CP of children, and there was no enactment regarding juvenile justice until 2013.

Although the amendment of CA 2013 was a landmark on the child rights, full commitments are far-reaching as it only focuses on the CP in the judicial settings but fails to ban CP in educational, family or other settings. The above analysis demonstrates that existing legislation and practices do not fully comply with the international standards. For that reason, author suggests that more provisions relating to banning CP in different settings, e.g., family, school and other settings should be categorically incorporated in the Child Act of 2013. In this respect following recommendations could be taken into account.

Although Bangladesh has made remarkable progress in the field of juvenile justice through the 2013 Act, some areas remain inadequately addressed. The country has a long way to go as banning the CP in the educational institutions still ignored in the said Act. Despite the political unstableness and other setback and challenges posed by emerging global threats, Bangladesh remained committed to the obligations of putting its best efforts in implementing its human rights obligations.

Bangladesh has been adopting progressive policies that promote and protect human rights for all the children in school by through official regulation. So, it is expected that within a few years a further amendment will do where corporal punishment will be banned in the educational institution. At present, it is evident that Bangladesh calls for the necessity and efficiency of existing legal provisions regarding banning the violent discipline by parents. In addition, the country should continue its efforts in collaboration with its international partners in upholding human rights and humanitarian principles.

The Children Act is a milestone for the protection of the children under the juvenile justice system. So it can be said that some positive development is taking place in Bangladesh regarding CP of the children and it is proceeding towards the prevention of the School-based CP of the children. Also, social mobilization is the timely grater need in Bangladesh against the century-old customary practice of CP rather than punitive measures. In the same way, especially to overcome the limitations of traditional family values of punitive measures should be replaced by positive parenting.

In the end, the author would like to propose some concrete recommendations that would address the banning of the CP. Firstly; the State should conduct a thorough review of the existing legislation of Bangladesh and make the necessary amendment to erode the CP. The necessary legislative base for the protection of the children from the CP will be then created. The Country urgently needs to fill the legislative vacuum by prohibiting CP in school and adopt the policies in support for the family teaching positive discipline.

Secondly, State is also responsible for the allocation of the resources, for the creation of the national system for the child protection and the delivery of the work. More efforts should be given to educating the teachers, parents and also the children about the adverse effect of CP. Thirdly, for the NGO's, an awareness campaign should be conducted. Fourthly, the author recommends that an agency and the ombudsperson can be created for this purpose. Last but not least, increasing media representation and identifying CP as a crime could prevent CP in Bangladesh sooner.

The welfare of the children needs to be investigated from a broader perspective, since rights, as well as responsibilities, may be shared by relatives, patrons, communities and so on. The recognition of the rights and duties of parents should be inserted in the legislative framework. Reaching the goal will not be easy as it requires the commitment of a multitude of actors,

including policymakers in parliament and government, civil society representatives, media, communities, and families. The author hopes that the study can serve as a positive tool in the formulation of policy measures and activities that will help to ensure that every child of the country will have the protection from harmful influences, abuse, and exploitation and eventually participate fully in family, cultural and social life.

The author is confident that the results of the work will improve the current situation of the children by reducing the violent future citizens. The author is also hopeful discovering that common law countries like Australia, Canada, and the United Kingdom have ratified the CRC but have not fully outlawed physical punishment. On the other hand, United States which had the significant contributions in drafting CRC has neither ratified the CRC nor fully outlawed physical punishment.¹⁷⁶ However, most of the Federal States follow most of the rights enshrined in CRC. We must welcome the coming century with increased expectations. However, because of the socio-economic, traditions and values of the citizens of the country contrary to the best interest approach, very little can be expected within a short time.

“A society that cuts itself off from its youth severs its lifeline....You are the Guardians of the Lifeline. Nurture it; develop it; give it strength.”¹⁷⁷

¹⁷⁶ The Future of the Children's Rights . Michael Freeman, ed. Brill Nijhoff. Boston 2014.P-152

¹⁷⁷ Kofi Annan, the Secretary-General of the United Nations, address to the World Conference of Ministers Responsible for Youth, Lisbon, 8 August 1998. Assessable at:
<https://www.un.org/press/en/1998/19980810.sgsm6670.html>

ABBREVIATIONS

Art. -Article

BLD- Bangladesh Legal Decisions

1974 Act- The Children Act, 1974

CA 2013- The Children Act 2013

CRC-Convention of the Rights of the Child

GoB- Government of Bangladesh

NGO-Non Governmental Organization

SAARC- South Asian Association for Regional Cooperation.

UDHR- Universal Declaration of Human Rights

UN-United Nations

UNICEF- United Nations International Children's Emergency Fund

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