

Rethinking Corporal Punishment in Malaysian Schools: A Legal Discourse with Lessons from Sweden

*Menilai Semula Hukuman Korporal di Sekolah-Sekolah Malaysia:
Satu Wacana Undang-Undang dengan Pengajaran dari Sweden*

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ABSTRACT

Corporal punishment has long been a common disciplinary measure in Malaysian schools, supported by both school authorities and parents. However, with increasing global emphasis on children's rights, the Convention on the Rights of the Child (CRC) classifies corporal punishment as degrading treatment. Despite Malaysia's ratification of the CRC, the practice remains permissible due to a reservation to Article 37, leading to incidents of harm and ongoing debates about its appropriateness. This study examines Malaysia's legal frameworks regarding corporal punishment and their compliance with the CRC. A comparative analysis with Sweden, which has successfully banned corporal punishment, highlights the effectiveness of educational initiatives in fostering positive social change. Malaysia's approach, which limits corporal punishment to mild measures, contrasts with Sweden's reliance on public education to promote non-violent and positive discipline. This study further identifies challenges in banning corporal punishment in Malaysia, including cultural beliefs and disciplinary concerns, and proposes gradual steps toward prohibition. The study employs qualitative research methods, drawing from primary sources such as Malaysian legislation and policies, and secondary sources like academic literature. While Malaysia is not yet ready to fully abolish corporal punishment, a multi-faceted approach focusing on legislative reforms and public awareness can pave the way for a more child-friendly disciplinary environment.

Keywords: Children's rights; school discipline; corporal punishment; caning; abuse

ABSTRAK

Hukuman korporal telah lama menjadi langkah disiplin yang biasa di sekolah-sekolah Malaysia, disokong oleh pihak sekolah dan ibu bapa. Namun, dengan penekanan global yang semakin meningkat terhadap hak kanak-kanak, Konvensyen Hak Kanak-Kanak (CRC) mengklasifikasikan hukuman korporal sebagai satu bentuk perlakuan yang merendahkan maruah. Walaupun Malaysia telah meratifikasi CRC, amalan ini masih dibenarkan kerana pengecualian terhadap Artikel 37 yang telah menyebabkan insiden kecederaan kepada kanak-kanak dan perdebatan berterusan mengenai kesesuaiannya. Kajian ini mengkaji rangka kerja perundangan Malaysia mengenai hukuman korporal dan pematuhan terhadap CRC. Analisis perbandingan dengan Sweden, negara yang telah berjaya mengharamkan hukuman korporal, menonjolkan keberkesanan inisiatif pendidikan dalam membentuk perubahan sosial yang positif. Pendekatan Malaysia yang mengehadkan hukuman korporal kepada langkah-langkah ringan berbeza dengan pendekatan Sweden yang bergantung kepada pendidikan awam untuk mempromosikan disiplin tanpa kekerasan. Kajian ini turut mengenal pasti cabaran dalam mengharamkan hukuman korporal di Malaysia termasuk kepercayaan budaya dan kebimbangan disiplin, serta mencadangkan langkah-langkah secara berperingkat ke arah pemansuhan. Kajian ini menggunakan kaedah penyelidikan kualitatif merujuk kepada sumber primer seperti perundangan dan dasar Malaysia serta sumber sekunder seperti kesusasteraan akademik. Walaupun Malaysia masih belum bersedia sepenuhnya untuk menghapuskan hukuman korporal, pendekatan pelbagai aspek yang menumpukan pada reformasi perundangan dan kesedaran awam boleh membuka jalan ke arah persekitaran disiplin yang lebih mesra kanak-kanak.

Kata kunci: Hak kanak-kanak; disiplin sekolah; hukuman korporal; rotan; dera

INTRODUCTION

While there are numerous approaches to disciplining children, punishment remains as the primary method. A study found that more than 85% of Malaysians experienced corporal punishment during their upbringing (Kim Ho, 2019). It is a common experience for many to receive corporal punishment from the elders when they err or act mischievously during childhood. This form of physical discipline is perceived as a manifestation of “tough love” by elders toward their children. Elders believe that such discipline serves as a reminder to children, discouraging them from repeating mistakes and guiding them toward improved behaviour.

Consequently, when educators use the same approach with children in school, there is often limited negative reaction or disapproval from society. This is evident from a significant 47% of the 619 Malaysian parents surveyed who support physical punishment by teachers (Azril Annuar, 2019). In Malaysia, the likelihood of students experiencing corporal punishment from teachers is significantly high (End Corporal Punishment, 2024), as it is considered a lawful disciplinary method used by school administrators. However, the question of whether it is time to abolish school corporal punishment was heavily debated in 2017 following the tragic case of 11-year-old Mohamad Thaif Amin Mohd Gaddafi, a religious school student who was allegedly beaten with a rubber hose by his school’s assistant warden for making noise at a surau (Varughese, 2017; Halim, 2017). While his death was later attributed to *Leptospirosis (Kencing Tikus)* (Ahmad Fairuz & Rizalman, 2017), the incident initially intensified discussions on the dangers of corporal punishment in schools. A recent incident in which a student suffered an eye injury from caning by an assistant discipline teacher has reignited the debate over abolishing corporal punishment in Malaysian schools (Leong, 2023; Focus Malaysia, 2023; SUHAKAM, 2023). Despite this, the practice remains prevalent in Malaysian schools.

As the world progresses and children’s rights advocates emerge, the issue of abolishing corporal punishment gains international attention. A notable global trend is emerging away from supporting physical punishment in schools. Currently, 65 out of approximately 199 countries have banned all forms of corporal punishment (ReliefWeb, 2023). Corporal punishment in schools has been linked to serious physical harm, as seen in the increasing number of reported cases where children suffer severe injuries, including burns on the buttocks from heated objects (Ahmad Fairuz & Chuah, 2017) and injuries to the eyes, ears, and back (Leong, 2023; Ramendran, 2024).

The Committee on the Rights of the Child (“the Committee”) views school corporal punishment as a violation of children’s fundamental rights to dignity and physical integrity (United Nations Committee on the Rights of the Child, 2007a; 2007b; 2006; SUHAKAM, n.d). It considers this practice a form of torture and cruel, inhuman, or degrading treatment, which breaches Article 37 of the Convention on the Rights of the Child (CRC). Consequently, the Committee has consistently recommended that all State parties, including Malaysia, enact laws and measures to eliminate corporal punishment in all settings, including schools (SUHAKAM, 2021). However, Malaysia has made a reservation on Article 37 of the CRC, illustrating the challenges and ongoing efforts to align Malaysian national laws with the principles of the CRC. A recent case of a student sustaining an eye injury from caning has reignited debates on abolishing corporal punishment in Malaysian schools and highlighted the challenge of balancing cultural norms with international human rights standards. Thus, this article examines Malaysia’s legal framework on corporal punishment in schools and its compliance with the CRC. It assesses the effectiveness of corporal punishment by drawing insights from Sweden, the first country to ban the practice in 1979, and explores the challenges of enforcing a similar ban in Malaysia. Finally, it provides

recommendations for reforming Malaysia's approach to school discipline, emphasizing non-violent alternatives that align with international child protection standards while considering cultural, religious, and legal contexts.

METHODOLOGY

This study adopts a doctrinal legal research approach, using qualitative methods to examine Malaysia's legal framework on corporal punishment in schools and employs a comparative analysis with Sweden to provide insights into how legal reforms and public education shape disciplinary practices (Bryman, 2016). Primary sources include Malaysian laws, government policies, and international legal instruments such as the CRC. These are analysed using doctrinal and statutory interpretation methods to assess Malaysia's legal stance and its reservations to Article 37 of the CRC (Hutchinson & Duncan, 2012). Secondary sources consist of academic literature, journal articles, books, and reports from legal scholars and child rights organizations. These offer theoretical and comparative perspectives on the effectiveness of legal reforms and awareness initiatives. Content analysis is applied to identify legal gaps and challenges in aligning Malaysia's corporal punishment framework with the CRC, as well as the effectiveness of legal reforms and public education initiatives in fostering non-violent disciplinary practices (Hutchinson & Duncan, 2012). By integrating these sources, this study provides a comparative perspective on corporal punishment in schools, identifying legal, cultural, and institutional barriers and proposing steps for gradual reform.

RESULTS AND DISCUSSION

DEFINITION OF CORPORAL PUNISHMENT

To understand the growing concern regarding corporal punishment, it is important to define the term. Corporal punishment against children can occur in different settings, namely, judicial corporal punishment, which is ordered by a court of law; parental or domestic corporal punishment, which occurs in the home; and school corporal punishment, which occurs when students are punished by teachers or administrators. Regardless of the setting, corporal punishment is generally defined as the use of physical force to discipline a child by controlling their behaviour through punishment (Peterson & O'Connor, 2014).

It is also referred to as physical punishment. The physical force described does not always lead to physical injury but involves actions that cause pain to children (Elliman & Lynch, 2000). According to the United Nations Committee on the Rights of the Child (2006), corporal punishment refers to any physical force exerted on a child's body with the intention of causing even mild pain or discomfort. Despite the broad definition provided by the Committee, there is no precise statutory definition of corporal punishment in Malaysia. The term "corporal punishment" generally refers to imposing a penalty on the body for an offence or fault. In Malaysia, it is commonly understood to mean caning with a *rotan* (Visvalingam, 2016).

There are various ways to inflict corporal punishment, typically involving hitting, smacking, slapping, or spanking children with a hand or implements such as a whip, stick, belt, shoe, wooden spoon, or similar objects. It can also include actions such as kicking, shaking, throwing, scratching, pinching, biting, pulling hair, boxing ears, forcing children to stay in

uncomfortable positions, burning, scalding, or forced ingestion (United Nations Committee on the Rights of the Child, 2006). These instances are not uncommon in Malaysian schools, as evidenced by a study conducted in nine primary and ten secondary schools across six Malaysian states. The study revealed that students experience various forms of corporal punishment, including physical acts such as slapping, pinching, hitting on the head, and pulling hair, eyebrows, ears, and sideburns (Anusuya, 2010). In summary, when teachers use a cane to discipline students, it is regarded as corporal punishment, regardless of the severity. If it causes pain and aims to correct or control students' behaviour, it qualifies as corporal punishment.

THE LEGAL STATUS OF CORPORAL PUNISHMENT IN MALAYSIAN SCHOOLS

In Malaysia, corporal punishment in schools is legally permissible, albeit under strict conditions. The Ministry of Education governs the practice, with authority granted by Section 130(2)(g) of the Education Act 1996. This provision allows the Ministry to create subsidiary legislation that outlines procedural and administrative guidelines for maintaining discipline in schools, including the administration of corporal punishment. These guidelines are communicated to schools through administrative circulars, which include specific provisions on corporal punishment, and are also applicable to tahfiz and private religious schools (Chow, 2017).

Two key pieces of legislation regulate corporal punishment in Malaysian schools are the Education Regulation (School Discipline) 1959 (Regulation 1959) and the Ministry of Education Circular 7/2003: Powers of Teachers to Cane Student (Circular 2003). Despite Malaysia's advancement as a nation and the evolution of its legal framework, corporal punishment remains governed by the Regulation 1959, a statute introduced during British colonial rule in the 1950s. This continued reliance on older legislation reflects a prevailing belief that corporal punishment is essential for maintaining discipline and order within schools. However, it is important to note that corporal punishment is permitted only in cases of severe misconduct and is strictly limited to caning. Schools are strictly required to comply with the Regulation 1959 and the Circular 2003 when administering corporal punishment. These documents outline specific circumstances under which corporal punishment may be applied, ensuring that it is not imposed arbitrarily or excessively.

According to Regulation 5(1) of the Regulations 1959, the school principal is authorized to employ corporal punishment as a means of maintaining discipline among students when deemed necessary and appropriate. However, under Regulation 5(1)(a), corporal punishment is only applicable to boys, with girls being explicitly exempted from such disciplinary measures. The method of administering corporal punishment is outlined in Regulation 5(1)(b), which specifies that it should consist of blows with a light cane either on the palm of the hand or on the buttocks, over clothing. This punishment may only be carried out by the school principal or a teacher who has been explicitly authorized by the principal for this purpose. Moreover, Regulation 5(2) mandates that any punishment administered under Regulation 5(1) must be documented. The records should include details such as the nature of the offense, the number of strokes given, the body part affected, the name and signature of the individual administering the punishment, and the names of any witnesses present. These records are confidential and must be securely retained by the school.

In addition to following the prescribed manner of corporal punishment, the delegation of authority over its administration is a critical factor in determining its lawfulness. Regulation 6 stipulates that while the school principal holds the primary responsibility for administering corporal punishment, they may delegate this authority to another teacher, typically the school

discipline teacher. The principal must issue an official appointment letter to the designated teacher as proof of authorization. This formal delegation is particularly important in cases where parents allege abuse of power by teachers. By clearly designating authority, the risk of litigation is minimized, and it helps ensure that corporal punishment is not administered by unauthorized teachers (Tie, 2012). According to the Circular 2003, the school principal or authorized discipline teacher administering corporal punishment must understand that its true purpose is to be part of the educational process. The aim is to educate and maintain discipline, not to degrade or inflict excessively severe physical abuse on students. As such, caning is strictly intended for disciplinary purposes and should never be used to harm a student, either physically or mentally. Teachers who administer corporal punishment should do so not out of anger or vengeance, but with the intent of teaching students that there are consequences for their actions.

Given that caning is intended solely to educate and discipline students, it should never result in additional negative effects. Public caning, whether during assembly or in classrooms where teaching and learning are taking place, is strictly prohibited. It is recommended that caning be conducted in a private setting, such as the principal's office, where only the teacher and the student are present. The Ministry of Education has emphasized that public caning undermines a student's dignity and can have detrimental effects on their personality development (Ministry of Education, 2003). However, permitting corporal punishment as a disciplinary method does not justify the use of excessive force. Only reasonable force is permitted in administering corporal punishment. The strict prohibition of excessive force is clear in Regulation 5, which specifies that caning should be restricted to specific parts of the body. The Ministry of Education expects teachers to exercise this authority with reasonableness and in good faith, as excessive force constitutes cruel and unusual punishment, contrary to its intended purpose.

To ensure the appropriate use of corporal punishment, detailed guidelines assist teachers in determining suitable disciplinary actions according to the severity of the offense. Circular 2003 classifies offenses into three categories, namely, minor, moderate, and serious. Minor offenses, such as disrupting class, not submitting homework, or being late, are dealt with through verbal warnings and counseling. If these offenses are repeated more than three times, they are upgraded to moderate offenses, which include actions like damaging school property and cheating. If moderate offenses are repeated beyond three occurrences, they are deemed serious offenses, such as possessing drugs and showing disrespect to teachers. For moderate offenses, corporal punishment may consist of up to three strokes with a light cane on the palm, while serious offenses may lead to up to three strokes on the buttocks, over clothing (Ministry of Education, 2003). Ultimately, these guidelines aim to ensure fair and consistent disciplinary practices in schools. Under Illustration (i) of Section 350 of the Penal Code, if a school principal administers caning to a student within reasonable discretion, it is not considered criminal force, even if it causes fear or annoyance. However, if the punishment exceeds reasonable bounds, teachers may be charged with assault under the Penal Code. Teachers may also face internal disciplinary actions and be held accountable for damages in civil cases if the punishment is deemed excessive (Tie, 2012).

Similarly, the Child Act 2001 safeguards children by prohibiting excessive physical harm while still allowing reasonable physical discipline. Under Section 31(1), individuals responsible for a child's care may face fines of up to RM50,000, imprisonment for up to 20 years, or both if they subject a child to actions likely to cause physical or emotional injury, including abuse, neglect, abandonment, or exposure to harm. Additionally, Section 17(2)(a) defines physical injury as significant and observable harm resulting from the deliberate use of force or harmful agents, such as lacerations, bruises, fractures, burns, or loss of consciousness. Section 17(2)(b) further classifies

emotional injury as substantial harm to a child's mental or emotional well-being, evidenced by conditions like anxiety, depression, withdrawal, aggression, or delayed development. Therefore, any instance of excessive corporal punishment that results in harm to a student may invoke legal consequences under the Act.

Before the introduction of the Circular 2003, which formally outlined the power of teachers to cane students, several earlier circulars shaped Malaysia's approach to school discipline. Circular 8/1983 addressed punishments for student misconduct not explicitly covered in education rules, while Circular 7/1995 established procedures for imposing disciplinary actions. Circular 10/2001 designated all teachers as disciplinary figures, reinforcing their authority in maintaining school discipline. Circular 7/2003 then specifically granted teachers the power to administer caning under regulated conditions. More recently, Circular 7/2011 introduced the Standard Operating Procedures 1:3:7 for reporting and handling disciplinary issues, reflecting ongoing efforts to refine school discipline policies (Bernama, 2021).

Despite these evolving guidelines, enforcement remains inconsistent. Reports indicate that school authorities sometimes disregard Ministry regulations, leading to instances of excessive punishment. For example, a teacher was reported to have repeatedly caned a student in front of a school assembly, raising concerns about the psychological impact of public punishment (Choudhury, 2023). In another case, a female student was caned for using derogatory language, despite regulations prohibiting caning for female students (Mohd Sabran Md Sani, 2019). A particularly alarming case involved a student suffering an eye injury due to caning, prompting the Children's Commissioner of the Malaysian Human Rights Commission (SUHAKAM), Dr. Farah Nini Dusuki, to call for a reconsideration of corporal punishment in schools (SUHAKAM, 2023). The incident underscored concerns about the risks of severe harm when punishment is administered carelessly or in anger, reinforcing the argument that alternative disciplinary methods should be prioritized.

Significantly, maintaining control through self-regulation, adherence to school policies, and ethical guidelines is essential to ensure a safe and supportive learning environment. This includes managing various student behaviors and challenges logically and professionally. Self-regulation, which involves controlling thoughts, emotions, and actions, plays a crucial role in preventing impulsive reactions that could result in harm (Azad Iqram Nadmilail et al., 2024). While Malaysia does not explicitly endorse excessive corporal punishment, the continued use of physical discipline in schools has sparked debates on whether existing policies align with international child protection standards and evolving views on children's rights. The Ministry of Education has been urged to reconsider its stance, emphasizing non-violent disciplinary methods that protect students' dignity while promoting constructive behavioral correction.

MALAYSIA'S OBLIGATIONS UNDER THE CRC AND ITS IMPLEMENTATION

Malaysia ratified the CRC in 1995 but entered a reservation to Article 37, ensuring that its obligations under this provision align with its Constitution, national laws, and national policies (United Nations Treaty Collection, 1989). SUHAKAM has analyzed Malaysia's reservations to the CRC, including Article 37, and identified key concerns such as corporal punishment in schools, preventive detention laws, and Syariah law considerations as reasons for maintaining the reservation (SUHAKAM, 2013). This reflects broader tensions between universal human rights principles, such as those in the Universal Declaration of Human Rights (UDHR), which promote individual freedoms without external interference, and Islamic perspectives on human rights, as

outlined in the Universal Islamic Declaration of Human Rights (UIDHR), which emphasize Shariah as the guiding framework (Indriaty & Ahmad Muhyuddin, 2021).

The broad scope of Article 37 extends beyond juvenile detention and judicial punishment, encompassing disciplinary measures in schools, alternative care facilities, and child labour situations (United Nations Committee on the Rights of the Child, 2007a). This reservation enables Malaysia to continue enforcing corporal punishment in both educational settings and the juvenile justice system without directly violating its CRC obligations. While this reservation grants Malaysia legal flexibility, it has been widely criticized for undermining children's rights and contradicting international human rights standards (Abiad, 2008).

It is important to distinguish between disciplinary measures in educational institutions and punitive measures within the criminal justice system. In the educational context, corporal punishment remains legally permissible in Malaysia under the Education Act 1996, which allows caning for male students. Meanwhile, in the criminal justice system, judicial corporal punishment, including whipping, remains sanctioned for certain offences under Malaysian law. This distinction is crucial in assessing Malaysia's compliance with Article 37, as the reservation applies to both settings but has differing legal and practical implications (SUHAKAM, 2015; United Nations Committee on the Rights of the Child, 2007a).

Malaysia's reservation to Article 37 further allows it to maintain certain domestic legal provisions that conflict with the CRC's prohibition of torture, cruel, inhuman, or degrading treatment. This is particularly evident in the juvenile criminal justice system, where national laws continue to permit practices inconsistent with CRC standards. While Section 97(1) of the Child Act 2001 exempts children from capital punishment, other laws, such as Sections 121, 121B, 121C, 122, 128, and 130 of the Penal Code, still allow the death penalty for specific offences, undermining the CRC's protections against cruel and inhuman punishment (SUHAKAM, 2015). Similarly, under Section 86(1) of the Child Act, children awaiting trial without bail are placed in detention facilities, a practice that contradicts Article 37(b) of the CRC, which mandates that detention be used only as a measure of last resort and for the shortest possible time (United Nations Committee on the Rights of the Child, 2007a). In 2007, approximately 2,718 male children aged 14–20 were detained in Kajang, Sungai Buloh, and Simpang Renggam prisons while awaiting sentencing or charges, despite the lack of juvenile-specific accommodations (Loh, 2007). Furthermore, Section 97(4) of the Child Act 2001 grants the Yang di-Pertuan Agong discretion over the release of detained children based on recommendations from the Board of Visiting Justices, potentially resulting in children being held longer than adults serving life sentences (Noor Aziah, 2012). While imprisonment of children under Section 96(2) of the Child Act 2001 is rare, children aged 14 and older may still face incarceration. More commonly, children are placed in Probation Hostels and Approved Schools (Ahmad et al., 2023). For example, Sekolah Tunas Bakti, an approved school, serves as a rehabilitation center for young offenders. However, unlike in Scotland, where parents play an active role in their child's rehabilitation through regular visits and continuous support, parental involvement in Malaysia remains minimal (Siti Hajar Abdul Rauf et al., 2022). Additionally, a study has shown that access to education for child offenders in detention institutions is inadequate due to a shortage of teachers, limited academic opportunities, and insufficient educational facilities (Noor Aziah Mohd Awal et al., 2023). Despite serving sentences proportionate to their offences, the rising recidivism rate suggests that young offenders struggle to reintegrate into society after their release from prison or rehabilitation institutions (Tharshini et al., 2020).

Moreover, Malaysia's preventive detention laws, such as the Prevention of Crime Act 1959 (POCA) and the Security Offences (Special Measures) Act 2012 (SOSMA), allow for the detention of juveniles without trial, directly conflicting with Article 37(d) of the CRC, which guarantees a child's right to legal assistance and the ability to challenge the legality of their detention before a court (Babulal, 2017). In 2017, 159 juveniles were reportedly detained under these laws, further highlighting the tension between Malaysia's domestic legal framework and its CRC obligations. While amendments to the Child Act 2001 in 2016 introduced reforms such as replacing whipping for criminal offences with community service under Section 91, these changes have had a limited impact, as other legal provisions permitting corporal punishment and degrading treatment remain in force. These inconsistencies underscore the limitations of Malaysia's current juvenile justice system and highlight the urgent need for a more rehabilitative approach that aligns with international child rights standards.

The continued reliance on punitive measures in Malaysia's juvenile justice system highlights the need for a shift toward restorative justice, a model that prioritizes rehabilitation, reintegration, and reconciliation over retribution. Restorative justice is recognized internationally as a more effective and child-friendly approach, aligning with the CRC's guiding principles, particularly Articles 37 and 40, which emphasize alternatives to detention and rehabilitation for juvenile offenders (United Nations Committee on the Rights of the Child, 2007b). Unlike traditional punitive systems that emphasize incarceration and corporal punishment, restorative justice focuses on repairing harm through mediation, community service, victim-offender reconciliation, and diversion programs (United Nations Office on Drugs and Crime, 2006). While Malaysia has taken steps toward restorative justice, such as introducing community service under the 2016 Child Act amendments, its implementation remains fragmented compared to comprehensive restorative justice frameworks in countries like New Zealand. A key challenge to adopting restorative justice in Malaysia is the legal and institutional framework, which still prioritizes punitive measures over rehabilitative solutions. For instance, law enforcement officers, prosecutors, and judicial personnel often lack specialized training in restorative justice principles, limiting the effectiveness of diversion programs and alternative sentencing options (Liefwaard, 2019). Additionally, there is no clear legislative mandate for nationwide restorative justice programs, unlike countries where such initiatives are embedded in law (United Nations Office on Drugs and Crime, 2006). To fully align with the CRC's principles, Malaysia must strengthen its commitment to diversion programs that keep children out of detention, implement formal restorative justice mechanisms, and train law enforcement and judicial officers on child-centered justice approaches. Expanding restorative justice conferencing, where offenders, victims, and community members collectively determine appropriate resolutions, could provide a viable alternative to incarceration. Moreover, specialized juvenile justice policies, modeled after successful programs in other jurisdictions, could help address recidivism, promote rehabilitation, and ultimately create a more child-friendly justice system.

In addition to Article 37, Articles 28(2) and 19 of the CRC are also critical in the context of the prohibition of corporal punishment in schools, and Malaysia has not made reservations to these provisions (Balasingam et al., 2019). Article 28(2) requires Malaysia to take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity, in full compliance with the Convention. In practice, Malaysia has taken steps toward fulfilling this obligation. For instance, the Circular 2003 prohibits the public caning of students, while the Regulation 1959 mandates that records of punishments be kept confidential.

Furthermore, Article 19 of the CRC obligates Malaysia to protect children from all forms of physical or mental violence, injury, abuse, neglect, maltreatment, or exploitation, including sexual abuse, by any person responsible for their care. The phrase “all forms of physical or mental violence” clearly prohibits any form of legalized violence against children (United Nations Committee on the Rights of the Child, 2007a). It follows that corporal punishment and other cruel or degrading disciplinary methods are considered acts of violence, and governments must take necessary legal, administrative, social, and educational steps to eliminate them. This obligation is reflected in Malaysia's Child Act 2001 under Section 31, which provides criminalizes child neglect, abuse, and mistreatment. It states that any person responsible for the care of a child who, willfully or negligently, causes or allows the child to be neglected, abandoned, or exposed to harm, whether physical or emotional can face legal consequences. The provision aims to protect children from mistreatment and imposes penalties, including fines and imprisonment, on offenders. However, this protection does not extend to corporal punishment, which remains legally permissible under other Malaysian laws. This creates a legal inconsistency where corporal punishment, despite being a form of physical harm, is not explicitly prohibited under Section 31 of the Child Act 2001.

The Committee, however, acknowledges that in certain exceptional circumstances, the use of reasonable restraint may be justified. Specifically, teachers and individuals working with children in institutions or those in conflict with the law may employ physical interventions to protect children or manage dangerous behaviour. Such exceptional situations occur when a child poses an imminent risk of harm to themselves or others, and teachers may use manual restraint once all alternative methods have been exhausted (United Nations Committee on the Rights of the Child, 2007b). It is important to emphasize that, while the exception permits the use of physical restraint, its primary purpose is to protect the child from harm, not to serve as a punitive measure. The Committee makes a clear distinction between the use of force for protection and the use of force as a form of punishment. The fundamental principle guiding the use of restraint is that it must involve the minimum necessary use of force for the shortest possible time (United Nations Committee on the Rights of the Child, 2006).

In light of this, the Committee recommends that school authorities receive detailed guidance and training to ensure that any interventions are safe, proportionate to the situation, and avoid the intentional infliction of pain. Such training is essential in minimizing the need for restraint, ensuring that interventions, when necessary, are carried out in a manner consistent with the child's rights and dignity. Based on the above, it is clear that there are two opposing perspectives between the Committee and Malaysia regarding the practice of corporal punishment. The Committee emphasises creating a positive atmosphere where students and teachers interact positively to prevent misbehaviour proactively. They advocate for the use of positive discipline methods to shape behaviour, rather than solely relying on punishment as a reaction to misbehaviour. Conversely, Malaysia still believes in corporal punishment as a deterrent for bad behaviour (Balasingam et al, 2019).

Despite the Malaysian government maintaining a conservative stance on corporal punishment, the Human Rights Commission of Malaysia (SUHAKAM) has strongly urged the government to remove its reservation to Article 37 of the CRC. SUHAKAM argues that there is no valid reason to retain this reservation, as the core principles of Article 37 which protects children from torture or cruel, inhuman, or degrading treatment are already reflected in Article 5 of the Federal Constitution regarding personal liberty (SUHAKAM, 2005). The main concern surrounding Malaysia's reservation stems from the imposition of the death penalty on juvenile

offenders, a practice which has been prohibited under Section 97 of the Child Act 2001 (SUHAKAM, 2015). Additionally, provisions for caning children for criminal offences have been replaced by community service under Section 91 of the Child Act 2001, following the 2016 amendments, which came into effect in January 2017 (SUHAKAM, 2020). These advancements have indeed lessened Malaysia's justification for maintaining its reservation to Article 37 of the CRC. However, the primary challenge remains the juvenile justice system's emphasis on formal police and court interventions, alongside rehabilitation within institutional settings. Malaysia still lacks specific legislative or policy frameworks that promote restorative justice approaches, such as diversion programs tailored to children (Norshamimi & Aminuddin, 2022). This stands in contrast to the CRC's strong advocacy for positive discipline, which emphasizes restorative methods over punitive corporal punishment.

Therefore, Malaysia's reservation to Article 37 allows practices that conflict with the CRC's protections against cruel and degrading treatment. While some guidelines regulate corporal punishment in schools, it remains legally allowed in both education and the justice system. Preventive detention and judicial corporal punishment further highlight the need for legal reforms to better protect children's rights.

LESSONS FROM SWEDEN: THE GLOBAL IMPACT OF BANNING CORPORAL PUNISHMENT

While many countries hesitated to abolish corporal punishment of children in schools or homes, Sweden emerged as a global pioneer in addressing this issue. Sweden's approach was deliberate and gradual, spanning over 51 years (End Corporal Punishment, 2021). The journey began in 1929 with the banning of corporal punishment in secondary schools under the Education Act 2010. In 1957, acknowledging the prevalence of domestic violence against children, lawmakers removed the criminal defense for corrective assault from the Penal Code. The prohibition of corporal punishment in schools was subsequently expanded to all levels in 1962. Finally, in 1979, after extensive studies and evaluations, Sweden's Parliament passed a landmark proposal instituting a total ban on corporal punishment under the Parents' Code (Stewart-Tufescu, 2023). This comprehensive legislative framework eradicated any ambiguity regarding non-abusive assaults on children, ensuring full protection across all settings.

The prohibition of corporal punishment in schools is explicitly detailed in the Education Act 2010. Chapter 5 of the Act addresses safety and discipline, affirming that corporal punishment is not permissible as a disciplinary measure. Furthermore, Chapter 6 protects students from degrading, abusive, or offensive treatment by school staff (End Corporal Punishment, 2020). These measures foster a respectful and supportive learning environment. Similarly, corporal punishment in the home is prohibited under Chapter 6, Section 1 of the Parents' Code. This provision guarantees children the right to care, security, and a nurturing upbringing. It mandates that children must be treated with respect for their individuality, explicitly forbidding physical punishment or any other injurious or humiliating treatment (World Future Council, 2021).

The primary aim of Sweden's legal reforms is educational rather than punitive (Durrant, 1999). The legislation is designed to educate parents and teachers on the importance of using non-violent disciplinary methods, rather than prosecuting them for violations. For this reason, no penalties are directly associated with the ban itself. Instead, punishments for violations fall under the Penal Code, applying only when actions meet the legal definition of assault (Bartman, 2002). Chapter 3, Section 5 of the Penal Code governs assault. Individuals causing bodily injury, illness, pain, or rendering someone helpless may face imprisonment of up to two years for ordinary assault.

Lesser offenses may result in fines or imprisonment of up to six months. Severe cases are classified as gross assault, carrying penalties ranging from one to ten years of imprisonment. Crucially, following the amendments, these assault provisions apply equally to offenses committed against both adults and children (Modig, 2009). Through these reforms, Sweden has set a global benchmark for child protection, underscoring the importance of non-violent methods in child discipline. The country's focus on education and prevention rather than punishment has contributed to a significant cultural shift, promoting positive parenting and safeguarding the dignity and well-being of children.

The law does not prescribe what adults can do to children but explicitly recognizes children's rights to be respected and fully protected (Stewart-Tufescu, 2023). Swedish legislation is structured to uphold children's rights, focusing on safeguarding them rather than eliminating all forms of child abuse indefinitely. This legislative reform has had a profound impact on public behavior, leading to a marked decline in corporal punishment by Swedish adults. Shortly after the ban was introduced in the 1980s, 28% of surveyed parents admitted to hitting their children in the previous year. By the 2000s, this figure had fallen to virtually zero. In 2011, 86% of 15- and 16-year-olds reported never experiencing physical punishment, with only 3% of those who had indicating repeated incidents (Stewart-Tufescu, 2023). A 2016 national survey further indicated that while it remains challenging to confirm a substantial reduction in physical child abuse since the 2011 survey, there has been no evidence of an increase (Jernbro & Janson, 2017). This demonstrates the effectiveness of Sweden's approach in not only reducing corporal punishment but also maintaining a societal shift away from physical discipline.

The positive outcomes of this reform were largely enabled by extensive public campaigns actively promoted by the Swedish government. A 16-page brochure titled "Can You Bring Up Children Successfully without Smacking and Spanking?" was translated into multiple languages, including German, French, English, and Arabic. The brochure explained the law and offered practical guidance on non-violent parenting. These brochures were distributed to all households with young children. Additionally, to further spread awareness, information about the ban was printed on milk cartons for two months, encouraging family discussions at mealtimes (Modig, 2009). This public awareness campaign became Sweden's largest of its kind and successfully increased knowledge of the law among caregivers. Nearly 90% of Swedish adults surveyed were aware of the ban on corporal punishment enacted in 1979. Studies confirm that legislative bans achieve widespread acceptance within a year of implementation due to comprehensive nationwide publicity efforts (Bussmann et al., 2009). By educating caregivers on positive, non-violent methods of raising children, Sweden created a cultural shift that reinforced the importance of respecting children's rights and ensuring their well-being.

Following the ban on corporal punishment, positive discipline emerged as an effective alternative for managing children's behavior. Positive discipline emphasizes teaching appropriate behavior by interacting with children in a kind yet firm manner, focusing on preventing behavioral issues before they arise. Teachers and caregivers utilize this approach to foster appropriate behavior through teaching, setting routines, showing empathy, and offering support. Unlike punishment, which focuses on consequences, positive discipline employs respectful and non-violent methods to help children learn and internalize good behavior. For example, positive discipline encourages good behavior by rewarding it, correcting misbehavior respectfully, and explaining consequences. In contrast, punishment seeks to control behavior through harsh measures such as threats, slapping, flogging, name-calling, and shouting, often leaving children feeling humiliated and disconnected (UNICEF, 2017).

Positive discipline techniques in schools have demonstrated remarkable benefits, including reduced suspensions, improved classroom dynamics, better behavior and attitudes, and enhanced academic performance. Students who feel a sense of belonging to their school community through positive disciplinary measures are less likely to engage in risky behaviors and are more likely to achieve academically (Nelsen, 2021). Conversely, studies reveal that corporal punishment has detrimental effects on children's development. While it may secure immediate compliance, there is no strong evidence to suggest it improves long-term behavior. Instead, it often leads to severe psychological issues and increases the likelihood of criminal behavior (Visvalingam, 2016). Although a direct causal link between Sweden's corporal punishment ban and trends in youth well-being is difficult to establish, youth crime, drug use, rape, and suicide rates have significantly declined since the reform. For instance, Sweden saw a 20% drop in suicides, a 59% reduction in drug use, a 48% decrease in rape cases, and a 21% decline in theft among youths (Dina et al., 2014; Durrant, 2000).

Similar sentiments resonate in Malaysia. Datin Noor Azimah Abdul Rahim, chairman of the Parent Action Group for Education, argues that addressing behavioral issues with violence teaches children that aggression is an acceptable response. While corporal punishment may offer a quick solution, it fails to address the root causes of behavioral issues and often reduces students' engagement with school. Temporary compliance achieved through caning does not encourage long-term positive habits and may perpetuate a cycle of violence. If simple caning were a solution to crime, social and criminal problems in Malaysia would be nonexistent (Leong, 2023).

Professor Dr. Loh Sau Cheong from the University of Malaya's Department of Educational Psychology and Counselling advocates self-reflection and communication over corporal punishment. She suggests that teachers help students understand the consequences of their actions to foster self-awareness and behavioral improvement. Alternative methods, such as employing "negative punishment" (e.g., confiscating devices) and positive reinforcement to reward good behavior, should be prioritized. Research indicates that corporal punishment correlates with lower academic performance, poor psychological health, heightened depressive symptoms, and a greater likelihood of future physical punishment. To safeguard students' well-being, schools should avoid corporal punishment and adopt alternative disciplinary approaches (Leong, 2023).

Therefore it can be seen that Sweden's ban on corporal punishment has successfully promoted safer and more respectful disciplinary practices, benefiting children's well-being and providing a model for positive change globally.

BARRIERS TO REFORM: CHALLENGES IN BANNING CORPORAL PUNISHMENT IN MALAYSIAN SCHOOLS

While Sweden serves as a successful example of enforcing a strict ban on school corporal punishment, replicating such success in Malaysia presents significant challenges. It is crucial to carefully assess the relevance and feasibility of integrating foreign approaches into Malaysia's domestic context. Malaysia has considered abolishing corporal punishment in schools, but implementing such a reform has proven difficult. In response to calls from international organizations like UNICEF and local entities such as SUHAKAM, the Ministry of Education acknowledged the issue but refrained from making a definitive decision. The lack of equivalent infrastructure and resources in Malaysia complicates efforts to implement a similar ban.

Historically, physical discipline has been widely accepted in Asian parenting traditions, including in Malaysia, where authoritarian parenting styles emphasizing obedience and discipline are common. Many parents view corporal punishment as an essential tool to instill respect, good

behavior, and moral values in children. This belief is often reinforced by religious and cultural norms, where discipline is associated with ensuring a child's proper upbringing and future success. From an Islamic perspective, caning is viewed as an educational measure intended to instill good manners rather than as a punitive form of corporal punishment. It is not meant to cause harm or injury but to serve as a means of guiding children toward moral and ethical behavior. To prevent abuse, Islam establishes clear guidelines. First, the number of strokes should not exceed ten (Sahih al-Bukhari, 6456). Second, striking the face is strictly prohibited, as it is a sensitive and fragile part of the body (Sahih Muslim, 2612). Any disciplinary action must be administered in a controlled manner, prioritizing guidance over punishment (Muhammad Fahmi, 2017). Furthermore, Islamic teachings emphasize the role of parents in educating their children in religious practices. Parents are encouraged to instruct their children to pray from the age of seven and may resort to mild physical discipline if they refuse by the age of ten (Sunan Abu Dawud, 495). However, such measures should be implemented with the intent of nurturing responsibility rather than inflicting harm.

This perspective is supported by research indicating widespread parental acceptance of corporal punishment in Malaysia. Ganapathy et al. (2022) found that 60.0% of Malaysian parents believe in the necessity of physical punishment, with 54.3% actively practising it. This highlights deep-rooted cultural beliefs surrounding corporal punishment, further reinforcing its acceptance as a legitimate disciplinary method. Given these perspectives, they appear to align with the Regulations 1959 and the Circular 2003, which permit mild disciplinary measures aimed at educating and guiding children while establishing safeguards against abuse. This alignment suggests that a complete ban on corporal punishment in Malaysian schools may face resistance, as existing legal frameworks regulate its use rather than prohibit it outright. However, this approach contrasts sharply with the CRC, which advocates for an absolute ban on corporal punishment and upholds the child's right to protection from all forms of violence. The tension between maintaining traditional disciplinary practices and adhering to international human rights standards presents a significant challenge in implementing a ban on corporal punishment in Malaysian schools.

One of the key obstacles in abolishing school corporal punishment is the shortage of trained school counselors. Currently, Malaysia has 9,445 counselors nationwide, with 5,780 stationed in secondary schools and the rest in primary schools. This results in a high student-to-counselor ratio, 1 counselor for every 350 primary school students and 1 for every 500 secondary school students, significantly exceeding the ideal ratio of 1 counselor for every 250 students (Bernama, 2019). While the Regulations 1959 and the Circular 2003 emphasize that caning should be a last resort, to be used only after other disciplinary measures such as reprimands and counseling, the shortage of counselors makes alternative disciplinary interventions difficult to implement. As a result, teachers often lack viable options, leading to continued reliance on corporal punishment.

Additionally, a legal gap within Malaysia's legal framework presents another challenge to banning corporal punishment (Tai et al., 2021). Malaysia's reservation on Article 37 of the CRC has led to the absence of a clear definition of torture, cruel, inhuman, and degrading treatment in domestic laws, creating a legal loophole that allows school administrators to use corporal punishment. For instance, illustration (i) of Section 350 of the Penal Code provides a legal exception that permits school principals to cane students without it being classified as criminal force. This exemption limits the ability of law enforcement and judicial bodies to take strict action against such practices. Moreover, while the amendments to the Child Act 2001 in 2016 abolished whipping as a legal punishment for children in the civil legal system, other laws including the Penal Code, the Criminal Procedure Code, and the Prison Act 1995 still permit corporal

punishment as a disciplinary measure in penal institutions (SUHAKAM, 2015; End Corporal Punishment, 2024). No specific law uniformly prohibits corporal punishment across all institutions housing children. Additionally, Malaysia's juvenile justice system, which prioritizes rehabilitation over restorative justice, further complicates efforts to impose a nationwide ban on corporal punishment (Norshamimi & Aminuddin, 2022).

Thus, addressing the call to ban school corporal punishment requires the Malaysian government to carefully assess its feasibility and evaluate its potential impact on existing legal and social frameworks. A well-considered approach is essential to ensure effective implementation, as overlooking these factors could lead to unintended consequences and weaken the effectiveness of the ban.

PATH TO REFORM: PRACTICAL STEPS FOR ENDING CORPORAL PUNISHMENT IN MALAYSIAN SCHOOLS

Despite the challenges in implementing a ban on corporal punishment, its well-documented negative impact on children's development requires urgent legal and policy reforms. To ensure children's rights and well-being, Malaysia must take decisive actions toward the prohibition of corporal punishment in schools.

The primary recommendation is to enact a comprehensive legal ban on all forms of corporal punishment in schools (End Corporal Punishment, 2023). A clear legal prohibition is essential to effectively eliminate the practice and prevent the continued use of violent disciplinary methods. This would involve repealing provisions like Section 350(i) of the Penal Code, which currently allows headmasters to use caning, and revising Section 89 of the Penal Code, which permits harm to children under 12 with parental consent. Furthermore, the Circular 2003, which permits corporal punishment under certain conditions, should be updated to explicitly prohibit all forms of physical discipline in schools.

Legal reform alone will not be sufficient. To foster true change, public engagement is crucial. Drawing from Sweden's experience, Malaysia should implement media campaigns to raise awareness, correct misconceptions, and promote non-violent disciplinary alternatives (End Corporal Punishment, 2023). The Ministry of Education should clearly communicate the rationale for the ban, its enforcement strategies, and the availability of alternative methods of discipline, particularly to school administrators (Halim, 2017b).

Positive discipline should follow a structured, tiered approach. Initially, teachers should address minor disciplinary issues by encouraging self-reflection and helping students understand the impact of their actions. If misbehavior persists, cases can be referred to a discipline teacher, who can impose non-physical consequences, such as privilege withdrawal or a public apology. For more serious or repeated misconduct, the headmaster may take stricter measures, including expulsion as a last resort. This tiered approach ensures discipline is enforced consistently while promoting accountability and behavioral improvement (Raising Voices, n.d.).

To effectively implement the ban on corporal punishment, educators must receive appropriate training and support (End Corporal Punishment, 2023). This includes clear guidelines and comprehensive training in non-violent discipline methods. Malaysia's Education Blueprint 2013-2025 prioritizes teacher professional development, but it currently lacks emphasis on non-violent disciplinary approaches (Shift 4 of the Education Blueprint). Additionally, the shortage of counselors in schools hinders the adoption of positive discipline. To address these gaps, Malaysia should integrate UNICEF's handbooks, which offer practical strategies based on four key

principles: addressing misbehavior, ensuring proportionality, focusing on behavior correction over humiliation, and prioritizing rehabilitation over punishment (Hattingh, 2017).

Developing educators with strong social intelligence is essential for fostering positive classroom environments. Educators with high social intelligence are better equipped to engage students, enhancing their motivation through meaningful dialogue, recognition, and active participation. This creates a supportive, respectful, and nurturing educational atmosphere, encouraging students to thrive academically and socially (Yahyazadeh & Aida, 2011).

CONCLUSION

Malaysia's education system continues to utilize traditional disciplinary methods, despite the evidence from Sweden's experience with banning corporal punishment. The Ministry of Education's adherence to guidelines from 1959 and 2003 suggests a slower adaptation to modern approaches. By focusing primarily on caning as a form of corporal punishment, the government may overlook its broader harmful effects, hindering a more comprehensive response to the issue. Furthermore, while Malaysia is a party to the CRC, which advocates for the protection of children from all forms of violence, the continued legal permissibility of corporal punishment in schools raises concerns about its potential physical and psychological harm to children. This underscores the need for alternative disciplinary methods, such as positive discipline, to be more widely implemented. Moving towards modern disciplinary methods will require substantial efforts, including developing robust enforcement policies and legislative frameworks. The current state suggests that Malaysia is at a crossroads, with an opportunity to reassess and potentially reform its approach to student discipline.

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AUTHOR'S CONTRIBUTION

Fionne Teo Swee Yee and Nadhilah A. Kadir jointly conceptualized the research and developed the study framework. Fionne Teo Swee Yee was responsible for drafting the manuscript, while Nadhilah A. Kadir handled its review, editing, and finalization. Both authors collaborated in sourcing legal materials, analyzing policy implications, and formulating recommendations for reform.

CONFLICT OF INTEREST

The authors declares that there is no conflict of interest.

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