



**MEDIA STATEMENT
HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM)**

EDITOR, NEWS DESK

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**SUHAKAM COMMENDS THE DISSENTING JUDGMENT AS MORE
RIGHTS-CONSISTENT AND CONSTITUTIONALLY FAITHFUL**

KUALA LUMPUR (23 APRIL 2026) - The Human Rights Commission of Malaysia (SUHAKAM) refers to the recent decision of the Federal Court of Malaysia, in which a 2-1 majority held that judicial caning is constitutional under Malaysian law, following the dismissal of review applications by prisoners challenging their sentences. The majority decision was delivered by Chief Justice The Right Honourable Datuk Seri Panglima Wan Ahmad Farid bin Wan Salleh and Chief Judge of Sabah and Sarawak The Right Honourable Datuk Hajah Azizah binti Haji Nawawi, whilst the dissenting judgment was delivered by Federal Court Judge The Honourable Justice Dato' Lee Swee Seng.

SUHAKAM reiterates its longstanding position that judicial caning is inherently cruel, inhuman, and degrading, and cannot be reconciled with the constitutional guarantees of dignity and equal protection. International human rights standards, including those reflected in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT), consistently regard corporal punishment as incompatible with human dignity.

Whilst caning remains lawful under existing Malaysian legislation, its compatibility with evolving human rights norms remains deeply problematic. SUHAKAM therefore expresses its profound disappointment with the majority decision, which held that judicial caning does not violate constitutional guarantees under Articles 5 and 8 of the Federal Constitution of Malaysia. As reported, the majority ruled that whipping does not infringe the rights to life, personal liberty and equality before the law. Whilst SUHAKAM respects the majority ruling of the Federal Court, we are of the view that the majority decision represents a step backward in the development of a rights-based constitutional order. The interpretation adopted by the majority reflects a narrow and formalistic reading of fundamental liberties, one that does not sufficiently engage with the lived reality, severity and irreversible harm associated with corporal punishment. SUHAKAM emphasizes that constitutional interpretation must be progressive and responsive to contemporary human rights standards; and principles relating to fundamental liberties should be read generously and purposively, particularly where the treatment of individuals implicates dignity and integrity.

SUHAKAM strongly commends the dissenting judgment of Justice Dato' Lee Swee Seng which represents a more principled, rights-consistent and constitutionally faithful approach. It was an enlightened judgment; a breath of fresh air; and a manifestation of judicial activism. The learned Judge rightly recognised that judicial caning infringes Articles 5(1) and 8(1) of the Federal Constitution, exposes individuals to severe physical harm, long-term psychological trauma, and the risk of death, and constitutes cruel, inhumane, and degrading punishment. The learned Judge further observed that the way whipping is carried out under the Criminal Procedure Code and the Prison Regulations 2000 may result in significant long-term physical consequences. Some prisoners may experience lasting limitations affecting their ability to work, particularly in manual labour, while others may become permanently disabled and unable to support their families. Importantly, the learned Judge proposed that a declaration of unconstitutionality should apply prospectively, meaning that sentences of whipping not yet carried out should not be executed and no further such sentences should be imposed under the relevant legal provisions.



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SUHAKAM considers this reasoning to be firmly aligned with international human rights standards and reflective of a progressive constitutional jurisprudence that Malaysia should aspire towards. The dissenting judgment of Justice Lee Swee Seng stands as a powerful affirmation that the Constitution must be understood as a living document, one that safeguards not only legality, but also the dignity and humanity of all persons, including those convicted of offences.

In light of the above, SUHAKAM calls for:

- i. a comprehensive review of laws permitting corporal punishment, in line with international human rights obligations;
- ii. the adoption of alternative sentencing approaches that prioritise rehabilitation over retribution;
- iii. continuous engagement between policymakers, the judiciary, civil society, and the public to align Malaysia's legal framework with evolving standards of human dignity; and
- iv. Malaysia to accede to the UNCAT, a core international human rights treaty adopted by the United Nations General Assembly through Resolution 39/46 on 10 December 1984, and came into force on 26 June 1987.

To date, 176 countries have ratified or acceded to this treaty, with leaving only a small number of countries that have yet to be parties to UNCAT. Within ASEAN, six member states, namely, Timor-Leste, Vietnam, Laos, Indonesia, Philippines, and Thailand are already parties to UNCAT. SUHAKAM fervently hopes that Malaysia will join this growing global and reaffirm its commitment to upholding human dignity and strengthening the protection of fundamental rights for all.

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**Human Rights Commission of Malaysia (SUHAKAM)
23 April 2026**