HUMAN RIGHTS *advocacy*

SPARE THE ROD AND SAVE THE CHILD

Possible legal ways to eliminate torture in educational Institutions

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THIS is a pathetic story of a minor schoolboy of Dhaka City. Suppose his name is Dipu aged about 12 years and student of class IV. The name of his favourite teacher is Khorshed Alam who beat him (Dipu) indiscriminately and mercilessly on the plea of not preparing his class reading. Being repeatedly hit by the cane, the victim fell sick. First the boy was admitted to DMCH. Later, he was shifted to a private hospital where three days after, Dipu died.

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Soon after the incident all the teachers of the School including the alleged Khorshed Alam, went into hiding. Dipu's mother, on the very day of his son's death filed a murder case against the teacher Khorshed Alam. Police inquest report said there were black spots on the forehead and lips of the dead boy. Dipu's body was exhumed from graveyard after the filing of murder case by his mother. Doctor said blood clots found in the head, back, hands and legs of schoolboy. Dipu's exhumed body suggest that he had been beaten severely.

Now the case is under proceeding. Parents and Teachers usually impose some sort of corporal punishment over the children under their control. How far that is justifiable? From legal perspective, the basis of justification depends on the purpose, circumstance and reasonability of the force applied. Punishments for offences or misbehaviour of the child is one class while punishments for not following dress code or carrying number of note books or not doing the assigned homework etc, is different one. Whether law favours imposing the corporal punishment at all? If favours, does it confine to control the offensive behaviour or misbehaviour? Or extend to all sorts of simple, technical or some other activity, which cannot be categorised as evil? In the present article we will discuss about the trend of torturing (both psychological and physical) of Children in Educational Institution by their teachers and the possible legal ways to eliminate this violence.

Liability under different principles of law:

a) Imposing harm or corporal punishment on children in schools could be against the general principles of civil liability, which may result in payment of damages in an action for tort, i.e., civil wrong.

b) The general principles of criminal liability for assaulting, causing injury or harm resulting in prosecution under Sections 89, 319, 320, 349, 350, 351 of The Penal Code.

c) Violation of the principles laid down in the Convention on Child Rights.

Constitutional Safeguard

Article 35(5) of the Constitution of Bangladesh clearly states that no person shall be subjected to torture or to cruel, inhuman or degrading punishment or treatment. This provision ensures that the power to punish is exercised within the limits of civilised standards.

Criminal Liability

Criminal Liability requires malice on the part of teacher. Negligence and unreasonableness can replace malice and make him liable in certain circumstances, for causing simple injury or grave injury under the Penal Code. In Gonesh Chandra Shaha Vs. Daj Somani, 68 CWN 1081 it was held that teacher who caned the students and inflicted fist blows, causing bodily injury and loss of tooth, would be criminally liable and would not be benefited for having acted in good faith for the benefit of the victim. If teacher exceeds the authority and inflicts unreasonable punishment he would lose the benefit of Section 88 of the PC which protects acts done in good faith.

Protection for act done in good faith under Section 88 PC will not extend to grievous hurt and excessive use of force. Causing hurt (S 319), Grievous hurt (S 320), using force (S 349), Criminal force (S 350), Assault (S 353) are also offences that could result in prosecution of parents or teachers.

Law and legal systems are expected to protect the children from abuse of authorities either at home or at schools or at systems of administration of justice duly considering their childhood, innocence and incapacity to understand. Children below seven years are exempted from criminal liability.

Their act is not treated as an offence at all. Similar exemption is extended to children of above seven years and under twelve of immature understanding under Section 83 of PC. In essence, a child cannot be subjected to ordinary methods of physical punishments including imprisonment for the offences owing to their age and incapacity of formulating a malicious intention. Thus for being a student and having committed a wrong of not doing home work or violating a dress code, should not include any corporal punishment.

The Penal Code Section 88 protects an act, which is not intended to cause death, done by consent in good faith for person's benefit. Master chastising pupil fall under this clause. A head teacher who administers in good faith a moderate and reasonable corporal punishment to a pupil to enforce discipline in school is protected by this section and such an act is not crime under Section 323. Section 89 of the Penal Code protects an act by guardian or by consent of guardian done in good faith for benefit of child under 12 years. However the same section says that this exception will not extend to cause death, or attempting to cause death, causing grievous hurt.

These provisions extend to teachers having quasi-parental authority i.e., consent or delegation of authority from parents also, of course, with exceptions. Using excessive force, causing serious injury, purpose being very unreasonable can turn the act of the guardian or teacher with the consent of guardian, an offence, because such incidents are outside the scope of "good faith" and this act is not crime under Section 323.

Convention on Child Rights

Article 28(2) Convention on Rights of Child 1989 indicates that the school discipline should be administered in a manner consistent with the child's human dignity and the Convention. Article 28 says the education is a right and Article 29 says that the purpose of school education should be to assist the child in developing his or her personality talents, mental and physical abilities to their fullest potential. Article 3, 18 and 36 of the Convention deal with parental and adult responsibility in the private sphere and the right to protection from exploitation. Article 19 provides for measures to protect children against all forms of physical abuse and imposes an obligation on member states to protect children from all forms of physical or mental violence, injury or abuse. The CRC prohibits the torture or other cruel, inhuman or degrading treatment or punishment of Children in Article 37.

These provisions justify legal reforms that will impose criminal liability on parents or teachers and other adults who cause injury through violence and use corporal punishment. There must be a clear law and policy to curb domestic violence and battery of child by parents. Parents and teachers are legally accountable for violence and abuse of authority. However there is a need to spell this liability in clear terms of law for more certainty and to cause fear of law among them. Going by these norms, the concept of human rights and protection rights of children, it is to be understood that there is no 'minimum' acceptable term in corporal punishment.

Discipline in School and Corporal Punishment

The time has come to re-examine the saying 'spare the rod and spoil the child'. Children are at receiving end both at their own homes and schools from parents, teachers and non-teaching school authorities. Almost all schools inflict corporal punishments on students for various reasons. There are mainly two types of punishments in schools - i) Physical and ii) Emotional. The relationship between punishment and childhood we can analyse some questions: Who can punish whom? What is the crime for which punishment can be inflicted? Whether parents or teachers or School managers have any adjudicatory authority to decide circumstances under which a punishment can be inflicted, the quantum, method and timing or punishment? According to law, the adjudactory authorities alone have authority to hear complaints, try the contentions and draw the conclusions as liability and penalty. The corporal punishment especially envisages a legal process and appropriate authority to fix the guilt according to established and enforceable law, not otherwise.

It is both a crime and a civil wrong for holding some one guilty and inflicting penalty, without legal authority. In Bangladesh, the education system itself promotes corporal punishment. Teacher is assumed a respectful and thus powerful position. This power includes power to inflict corporal punishment. In India Public Interest Litigation was filed by Parents Forum and Meaningful Education (AIR 2001 Del 212), challenging the corporal punishment to a student. Justice Anil Dev Singh and Justice Mukundakam Sharma, said that it was cruel to subject a child to physical violence in school in the name of discipline or education. It was held that inflicting physical punishment on a child is not in consonance with his or her right of life guaranteed by Article 21 of Indian Constitution. "Just because child is small he or she cannot be denied of these rights.... Even animals are protected against cruelty. Our children are surely cannot be worse off than animal's"-said the High Court.

To prevent corporal punishment in educational instituions the following steps must be fulfilled:

a) The Education department must be well equipped with necessary personnel who can study the reasons for child behavior and teachers reactions and inspect the schools whether in private sector or public sector to oversee if any tormenting conditions are existing. In fact, auditing of behaviour in schools is more important than the financial auditing or verifying records.

b) The parents association should play a major role in checking the management of schools regarding these punishments. They have to regularly meet and bring collective representations to avoid isolated vindictive actions. It must be made mandatory for the school management to convene parents meeting regularly to address these issues.

c) Child Rights Committees in Schools also could play a role in checking the physical assaults in schools for trivial reasons. In the present circumstances it is necessary to prohibit the Corporal Punishment by enacting law.

Corporal punishments are envisaged for adults only in criminal cases. Then why children are subjected to physical thrashings for discipline or academic reasons? Bangladesh being a signatory to the UN Convention on Rights of Child is under an obligation to remove cruelty towards children by prohibiting the canes from schools. The Parliament should unhesitatingly enact a new law to prohibit all forms of corporal punishment in the name of discipline or making them to do home work. There should neither physical nor mental punishment in humiliating methods. The stress and strain imposed on child with terrorised atmosphere prevalent in the schools because of corporal punishments, cut throat competitions and increasing pressure for ranks lead them to leave the schools. Suicides are another major possible consequence of such terrible incidents in the schools. Let us all save their childhood. 'Spare the rod and save the childhood' should be the new slogan.

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LAW *opinion*

Backlog in the disposal of civil cases

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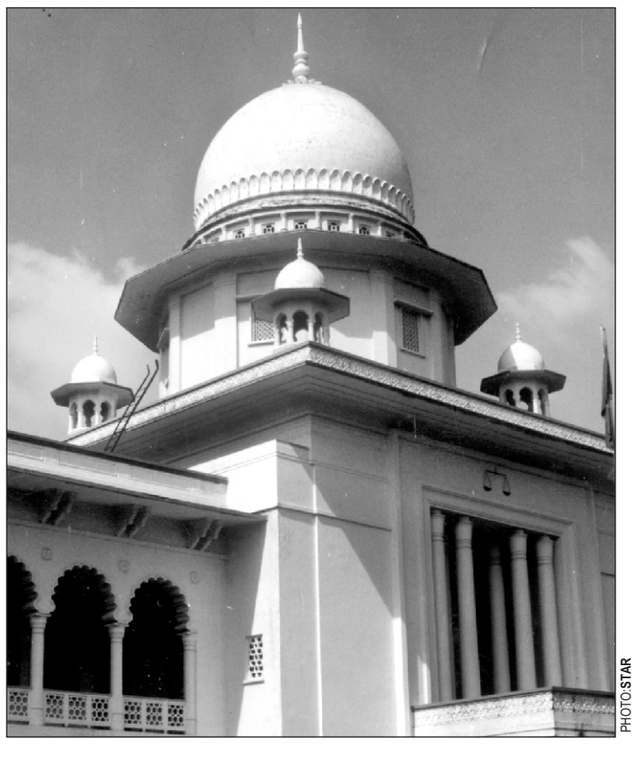
THE subordinate courts are under heavy pressure with the huge volume of pending civil cases. There is acute scarcity of judges in the trial court. After coming of the Civil Procedure Code (C.P.C) (Amendment) Act 2003 into force the disposal system has got a momentum. Out of fear of penalty the truant force now thinks at least twice to seek an adjournment in the trial. But the trial judges appear with the undone face as most of them are with the charge of extra courts. Now the question arises will the problems be solved just after the appointment of new judges? The answer is a big No. Then what is the real cause of backlog? I have just mentioned only about the partial removal of delay casually happened in the trial. But the cause of delay of a civil suit does not lie only in the trial stage. Whatever be the causes of delay of disposal of a civil suit does not lie only in the trial stage. Whatever be the causes of delay in the trial stage a large part thereof have been removed by the last amendment of C.P.C Yet there is a lot to do by our legislature.



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The ward 'Disposal' does not mean only the end of the stage of peremptory hearing of a suit. It includes the ending of a suit in the writing of a judgement and the approval of the same day the higher court. The amendment did not shed light on the hearing stage of the Appellate/Revisional court. The dragging parties are also found to be active here. On the plea of very untenable ground they come with a prayer for adjournament of hearing. The most common ground for such adjournament is the absence of the parties or the unpreparedness of the appointed lawyer most of whom are found to have been maintaining the Appeal/Revision for the years together. But the Amendment did not give the court any power in this stage to bind the parties in completing the hearing with in the specified adjournments. So the conducting lawyers are not found to be as much active in forcing their client to complete the hearing in this stage as were found in conducting the trial.

Such amendment shall also put the higher court in limbo with the huge volume of pending cases. To bring out the courts of such situation the further amendment in the territorial jurisdiction of the courts is required. At present the judges are posted considering the posts of a Judgeship created immemorial period of time ago. But the volume of pending cases in every Judgeship is not the same. So it appears that in some Judgeship the judges are floundering in the sea of pending cases whereas their colleagues are doing well with their minimum number of cases. This unequal pending works are equally liable in creating backlog in the disposal of the cases. To help remove this situation the posting of the Judges should be given against the certain number of pending cases not on the basis of existing posts. A judge can be posted for three years against per 150/200 pending cases.

The provisions of giving additional evidence in the appellate stage are there in the C.P.C Abusing of such provisions are not uncommon in practice. The parties should be brought under bindings in giving additional evidence so that they can not drug the Appeal any more. They must aver in the appeal memo whether they should require the producing of any additional evidence in line with the observations of the trial court, not at their own desire. Only documentary evidence should be allowed to produce here and to avoid delay the provisions of taking the certified copies of the Registered deeds into evidence without formal prove should be made in law.

The two most time consuming factors in the civil suits proceeding are the service of process and the execution of decree. The time killing in these stages can be minimised by making a provision in law about the service of process by the party himself before filing of the suits/cases as they follow the process in the service of legal notice. The parties can be directed to file the plaint together with the copy of the notice served/the reply given by the other parties/with A/D in the case of the service in other countries. In the present provisions of CPC an execution case can maintain for twelve years filing thrice having three years intervals. But what is harm if provisions are made for execution of decree by the court upon a simple petition filed by the decree holder with in six month of the decree if the same is not an expert one? The holistic vision of the problems can easily remove the backlogs prevailing in the dispensations of civil litigation system. Even the age old Code of Civil Procedure can be replaced by the new Act under the title of the Civil Litigations Act or some thing like that in the light of the experience of the Artha Rin Adalot Ain 2003.

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LAW *news*

Ethics, science and human rights come together

Young man signing consent form to participate in clinical trial in Iran

PRIYA SHETTY

UNESCO has issued a draft declaration it says will be the first ever to commit governments to take a position on the ethical and human rights dilemmas raised by modern research.

"Every culture, even those most critical of technological advances, must develop a response - be it supportive or controlling - to the emergence of new technologies [...] To do nothing is to make a decision," states an accompanying memorandum. The draft declaration, released on 24 June, is intended by UNESCO (the United Nations Educational, Scientific and Cultural Organisation) to provide guidance on how to draft laws that regulate ethics and human rights in science.

It urges states to consider ethical questions from a 'human rights perspective': at its heart is the statement that the welfare of the individual should have priority over the interests of society or governments. It stresses, for instance, the importance of obtaining prior informed consent from participants in scientific research, and that community or third-party consent should never be a substitute for the consent of the participating individual.

With regards to preserving biodiversity and indigenous knowledge, especially in developing countries, it emphasises the importance of people being able to access their local genetic resources and traditional knowledge systems.

Carolyn Stephens, a lecturer in ethics, human rights and public health at the London School of Hygiene and Tropical Health, told SciDev.Net that the declaration "is especially important in these times when many marginalised peoples all over the world have no support and think the world is simply exploiting them for medical science".

The declaration encourages governments to set up ethics committees to assess scientific developments, help keep the public informed and encourage public discussion of bioethics issues. Although guidelines on ethical and human rights issues exist, this is the first time the two subjects have been combined in a single document aimed at governments, says the director of UNESCO's division of ethics of science and technology, Henk ten Have.As an example, he points out that the Helsinki Declaration on research ethics is adopted only by the World Medical Association, a professional organisation.

Common international standards would benefit developing countries in particular, ten Have told SciDev.Net, as they tend to have weak ethics regulation systems. The draft declaration will be submitted for approval by all 192 UNESCO member states in October. Ten Have does not expect the final text to differ significantly.

Source: SciDev.Net