

LAW EVENT



Ending corporal punishment

NOOR JAHAN PUNAM

ON 27th December 2011, Ain O Shalish Kendra, Bangladesh Legal Aid and Services Trust (BLAST) and Campaign for Popular Education (CAMPE) in collaboration with Save the Children jointly organised a workshop on ending corporal punishment.

The guests at the workshop provided information about the recent developments in the area of corporal punishment in legal and practical terms.

Ms Sara Hossain, Honorary Director, BLAST, stated that the journey started 1.5 years ago when BLAST made an application for a judgment in the matter of corporal punishment at Justice Md. Iman Ali's court. Generally when writs are filed, they remain hanging but fortunately they got through with

ing up children at schools. Normally when someone beats another that is punishable under the law but if children are beaten up by their teachers or parents that is not penalised. The children are punished by beating for very little mistakes such as not taking colouring pencils to school, etc. He also emphasised that every child is the apple of his/her parents' eyes and that every child is an asset to any country. He furthermore expressed how corporal punishment is painful and humiliating to a child. He counts himself lucky that he passed the judgment on 18th July 2010 and soon after that the Education Ministry published a circular on 8th August 2010 stating that corporal punishment is absolutely prohibited. The Ministry also published guidelines on 31st October 2010 named Prohibition of Physical and Mental Punishment of Students. He highlighted the effects of corporal punishment on a child- they feel insecure about whom they can turn to? They think they are to blame for family trouble, etc, etc. He has seen the reaction of a child when a hand is lifted to slap him/her. Physical, psychological and emotional violence against children should be stopped. Otherwise, children would have the tendency of dropping out of school, truancy, losing interest in class, etc.

Sayed Ahmed, CEO, IID, stated that a small survey has been undertaken by BLAST and STC on the status of corporal punishment today. The survey has covered Rangpur, Barisal, Kushtia and Faridpur. The overall survey shows substantial fall in the practice of corporal punishment at schools.

Dr Muhammed Zafar Iqbal emphasised that children can be helped more by being rewarded rather than by beating.

Mr Nurul Islam Nahid, Hon'ble Minister, Ministry of Education assured that the Ministry will consider all the suggestions put forward at the meeting and bring them within the bounds of the law. A code of conduct for teachers will be in force very soon. He also asserted that the education process should be made attractive to children and fun filled. Most importantly, students should be respected by the teachers.

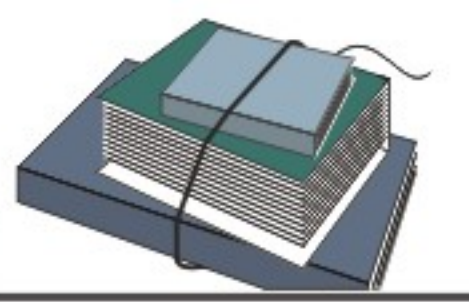
The writer is working with Law Desk, Daily Star.



the writ. The judgment has been logically placed and the judgment made was in accordance with our constitution. Not only that, the judgment also provided guidelines as to further reforms on the matter of corporal punishment. The aim of the workshop was to explore the development since the judgment.

Justice Md Iman Ali said that the matter of corporal punishment came into his view at the beginning of 2010 when all the newspapers were reporting how teachers were beat-

LAW LEXICON



Polling the jury - The act, after a jury verdict has been announced, of asking jurors individually whether they agree with the verdict.

Post-trial - Refers to items happening after the trial, i.e., post-trial motions or post-trial discovery.

Pour-Over will - A will that leaves some or all estate assets to a trust established before the will-maker's death.

Power - Authority to do. One has the power to do something if he is of legal age. Also, used as "powers," the term refers to authority granted by one person to another, i.e., powers given an executor in a will or an agent in a power of attorney.

Power of attorney - An formal instrument authorizing another to act as one's agent or attorney.

Precedent - Laws established by previous cases which must be followed in cases involving identical circumstances.

Preinjunction - Court order requiring action or forbidding action until a decision can be made whether to issue a permanent injunction. It differs from a temporary restraining order.

Preliminary hearing - Also, preliminary examination. A hearing by a judge to determine whether a person charged with a crime should be held for trial.

Preponderance of the proof - Greater weight of the evidence, the common standard of evidence in civil cases.

Presentence report - A report to the sentencing judge containing background information about the crime and the defendant to assist the judge in making his or her sentencing decision.

Presentment - Declaration or document issued by a grand jury that either makes a neutral report or notes misdeeds by officials charged with specified public duties. It ordinarily does not include a formal charge of crime. A presentment differs from an indictment.

Pretermitted child - A child born after a will is executed, who is not provided for by the will. Most states have laws that provide for a share of estate property to go to such children.

Pretrial conference - Conference among the opposing attorneys and the judge called at the discretion of the court to narrow the issues to be tried and to make a final effort to settle the case without a trial.

Prima facie case - A case that is sufficient and has the minimum amount of evidence necessary to allow it to continue in the judicial process.

Source: Jurist International.



LAW VISION

Right to privacy and the role of information commission

OLI MD. ABDULLAH CHOWDHURY

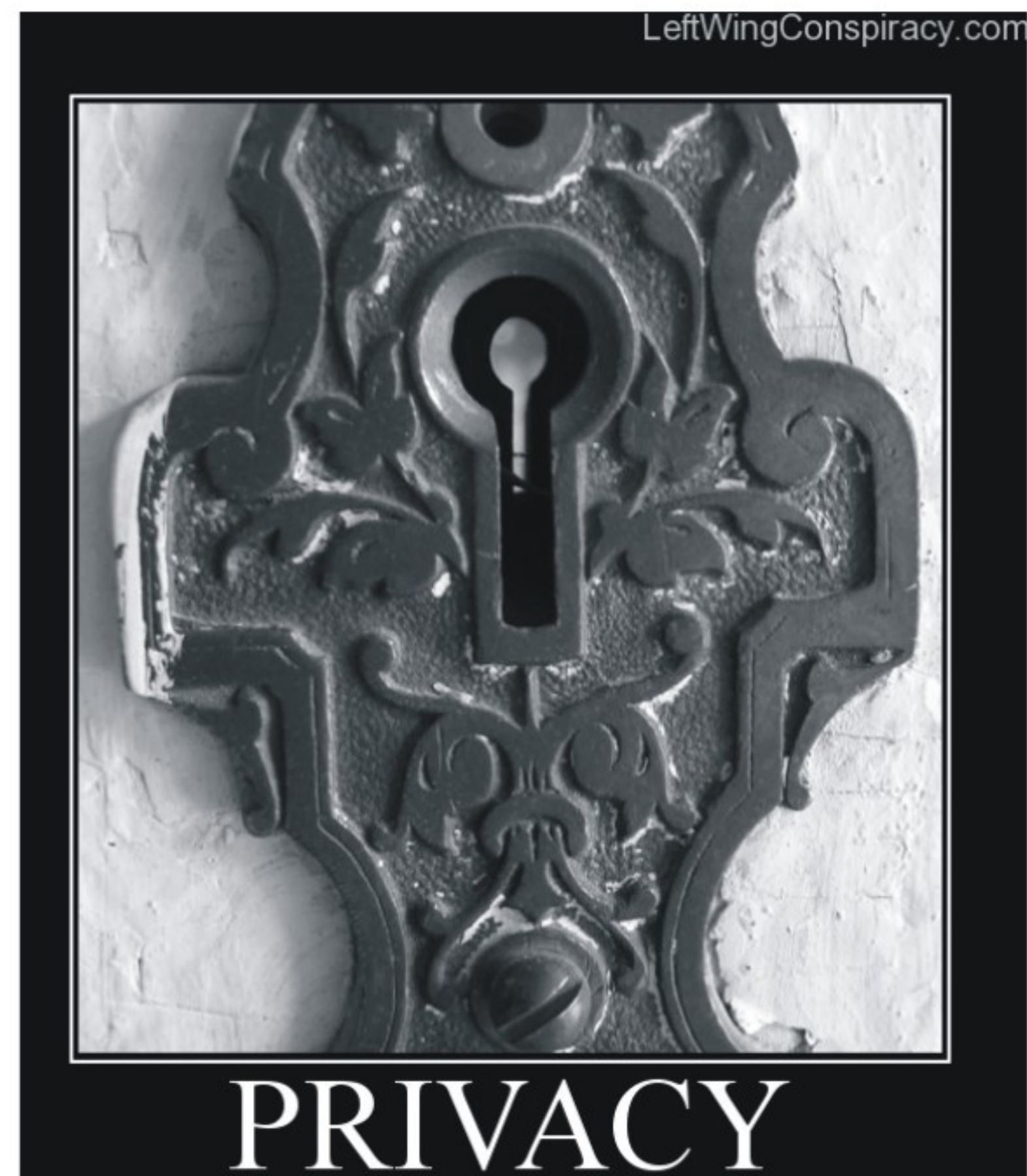
PRIVACY is a fundamental human right recognised in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Privacy not only underpins human dignity, but other key values such as freedom of association and freedom of speech. Although right to privacy issue is relatively new in Bangladesh, it has globally become one of the most important human rights issues.

In Bangladesh, the issue recently came forward as one of the customers noticed a camera in Persona as she was leaving the changing room after taking service. It has been published in The Daily Star (October 4, 2011) that Dhaka Metropolitan Police (DMP) authority formed a probe committee after the woman alleged she was taped on a closed circuit television (CCTV) camera while taking service at a reputed beauty salon, which is having branches in different locations of the city and several clients of that salon expressed their concern and debut on privacy came up.

"The Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured" said in Article 11 of the constitution of the People's Republic of Bangladesh. It has been further stated in Article 43, "Every citizen shall have the right, subject to any reasonable restrictions imposed by law in the interests of the security of the State, public order, public morality or public health (a) to be secured in his home against entry, search and seizure; and (b) to the privacy of his correspondence and other means of communication". Thus, provisions related to privacy rights occupy a place in the constitution.

Right to Information Act: Interestingly, Right to Information act reflects the spirit of respect for the dignity and worth of the human person. It has been stated in the Section 7 (h) "Notwithstanding anything contained in any other provisions of this Act, no authority shall be bound to provide with the following information, namely any such information that may, if disclosed, offend the privacy of the personal life of an individual". Information obviously includes images and videos as it is said in Section 2(f), "information includes any memo, book, design, map, contract, data, log book, order, notification, document, sample, letter, report, accounts, project proposal, photograph, audio, video, drawing, painting, film, any instrument done through electronic process, machine readable record, and any other documentary material regardless of its physical form or characteristics, and any copy thereof in relation to the constitution, structure and official activities of any authority: Provided that it shall not include note-sheets or copies of note-sheets".

The Information Commission enforces and oversees the Right to Information Act, Rules and Regulations made under the Act. It



has been stated in the Section 12 of the Right to Information Act, "The Commission shall consist of the Chief Information Commissioner and 2(two) other Commissioners, at least1 (one) of whom shall be a woman".

Data Protection Act in UK: In UK, The Data Protection Act ensures that like other forms of data footage is also reasonably captured and kept. It should be viewed by a designated staff member and not made widely available. The Data Protection Act also requires that the footage be made available to its subjects, where appropriate, and if requested.

The Data Protection Act sets rules which CCTV operators must follow when they gather, store and release CCTV images of individuals. The Information Commissioner can enforce these rules. However, the use of cameras for limited household purposes is not covered by the Data Protection Act.

Provisions might be included in the Right to Information Act so that footage and images are reasonably captured and kept. Unfortunately, business organisations are kept outside of the domain of the Right to Information Act. In order to tackle abuses related to video footage and images, necessary amendments should be made in the Right to Information Act.

The writer is a human rights worker.



YOUR ADVOCATE

This week Your Advocate is Barrister Tanjib-ul Alam Advocate, Supreme Court of Bangladesh. He is the head of the chamber of a renowned law firm, namely, 'Tanjib-ul Alam and Associates ', which has expertise mainly in commercial law, corporate law, admiralty, employment and labor law, land law, banking law, constitutional law, telecom law, energy law, Alternative Dispute Resolution, Intellectual Property Rights and in conducting litigations before courts of different hierarchies.



Shareholding

Query

I am a shareholder at a public limited company which has 5000 shares distributed among 100 shareholders. I have 5% share in the company. The Board of Directors' by taking a majority decision at the board meeting took away my membership. Please advice me as to what legal steps I can take against the company.

Anonymous.

Response

Thank you for your question. However, in order to fully answer your query it would have been more helpful had you given further information. I will try to answer your question on certain assumptions.

As a matter of general principle of law, it is not possible under the Companies Act, 1994 ("the Act") to take away your "membership" by a majority decision. It is not clear to me what you meant by the expression "took away my membership". Since you are a shareholder of a public limited company, you have absolute

right to own and retain the shares that you have subscribed and paid for.

The company can, however, take away your "membership" by "forfeiting" your shares. Forfeiture of shares can only take place when the payment for the shares remain due. Your question is silent about this issue. Assuming that you had subscribed 5% of the total issued shares but did not pay for the price of the shares, then no

wrong was committed by the company and its Board of Directors by taking away your membership. However, before taking away your membership, the company is under an obligation to give you a notice ("call notice") with a provision for at least 14 days time to make payment for the "unpaid" shares. Your question does not provide any information in what form your membership had been taken away.

Since you only hold 5% of the issued shares, you will not be eligible to seek remedy from the High Court as a "minority shareholder" under section 233 of the Act. However, you will be able to file an application under section 43 of the Act seeking rectification of share register of the company. The High Court Division has the power to pass any order in an application under section 43 of the Act.

You should consult a lawyer who is specialised in corporate and company matter to redress your remedy.

For detailed query contact: info@tanjibalam.com.



LAW WEEK

8 AL leaders acquitted (2006 violence)

A Dhaka court on 28th December 2011 acquitted eight members of the ruling Awami League and its front organisations of vandalism and assault on police in a 2006 case after the prosecution witnesses did not turn up for sixteen consecutive hearings. -The Daily Star online edition December 29, 2011.

Ex-CID officials appeal for discharge

Three former officials of the Criminal Investigation Department (CID) on 28th December 2011 appealed to a Dhaka court to discharge them from the August 21 grenade attack case filed under the explosive substances act. Judge Shahed Nuruddin fixed January 4, 2012 for the next hearing. -The Daily Star online edition December 29, 2011.

168 BNP men get bail

The High Court on 28th December 2011 granted bail to 168 BNP leaders and workers for two months in eight cases filed in connection with the violence in the capital and Sirajganj on December 18. The HC bench of Justice Salma Masud Chowdhury and Justice Md Anwarul Haque passed the orders after hearing five bail petitions filed by the accused. - The Daily Star online edition December 29, 2011.

War crimes charges sent back again

The prosecution suffered its second setback in a week on 28th December 2011 as the International Crimes Tribunal refused to consider the war crimes charges against Jamaat-e-Islami leaders Ali Ahsan Mohammad Mojaheed and Muhammad Kamaruzzaman because of flawed paper work and documentation. The tribunal asked the chief prosecutor to fix the flaws and submit the charges again next month. The tribunal asked the chief prosecutor to fix the flaws and submit the charges again next month. -The Daily Star online edition December 29, 2011.

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You may send us your daily life legal problems including family, financial, land or any other issues. Legal experts will answer those.

Please send your mails, queries, and opinions to: Law Desk, The Daily Star, 64-65, Kazi Nazrul Islam Avenue, Dhaka-1215; Tel: