

CENTRAL INFORMATION COMMISSION

(Room No.315, B-Wing, August Kranti Bhawan, Bhikaji Cama Place, New Delhi 110 066)

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Central Information Commissioner

CIC/CC/A/2014/002226-SA

Bhramanand Mishra v. PIO, KVS, Lucknow

Important Dates and time taken:

RTI: 09.08.2014	Reply: 14.08.2014	FAO: 21.10.2014
SA: 14.11.2014	Hearing: 21.07.2016	Decision: 22.07.2016
Result: Disposed of.		

Parties Present:

1. Appellant is present. Public authority: Present – Mr. S.K.Verma.

FACTS:

2. Appellant through his RTI application sought copy of inquiry report about physical beating of a student by teacher Mr. Yagya Dutt Arya in KVS, Pilibhit. The CPIO denied it considering it as third party information. When FAA consulted concerned teacher on disclosure, he objected. Appellant approached the Commission.

Decision :

3. The appellant explained that he needed that information so that his daughter secures the custody of children in her marital dispute against husband Mr. Yagya Dutt Arya. That is his motive.
4. On the other hand, considering the disciplinary action against a teacher for corporal punishment as personal and third party information is not justified. This information should be provided by the public authority on its own as mandated by Section 4(1)(d), which says:

Every public authority shall...(d) provide reasons for its administrative or quasi judicial decisions to affected persons.

(c) publish all relevant facts while formulating important policies or announcing the decisions which affect public.

5. It is the duty of the KVS, an important educational public authority to have a policy regarding elimination of corporal punishment, and that should be announced all over its branches and official website. It is legal mandate and in the interest of children, their education and future of the nation. The quasi judicial decision in punishing the teacher for assaulting a child should be informed along with reasons to the students who are affected in general and the victim of that assault, or his family, in particular. The KVS has to report to the Commission whether they have informed the victim or his family about this quasi-judicial decision. The KVS also shall inform its administrative policy that in face of proven conduct of teacher inflicting injuries on child, teacher shall be transferred to the school. But transferring such a teacher to a different school without motivating him against such wrongs will lead to similar incidents in the school where he was transferred. It is not known how the teacher was motivated by KVS.

6. While Section 4 imposes an obligation on KVS to voluntarily disclose, they denied the information citing Section 8(1)(j), which cannot be invoked in these facts and circumstances. The text of Section 8(1)(j) is:

8(1)(j)...information which relates to personal information the disclosure of which has not relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:

Even if section 8(1)(j) is assumed to be invoked, the school should have considered that imposing corporal punishment on children is against several laws including Juvenile Justice Act, 2000, i.e., a public wrong, its disclosure has relationship with public activity and it will be in public interest, the revelation of which would not cause unwarranted invasion of the privacy of the individual, besides larger public interest is involved in disclosure only.

8(2) Notwithstanding anything in the Official Secrets Act, 1923 (19 of 1923) nor any of the exemptions permissible in accordance with subsection (1), a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

7. Even if Section 8(2) is brought in, the disclosure should have been the right course in comparative public interest.

8. Corporal punishment in schools in India is a serious problem. The National Commission for Protection of Rights of Children (NCPRC) has issued comprehensive guidelines, which the KVS is expected to follow.

9. The United Nations Committee on the Rights of the Child defines:

“corporal” or “physical” punishment as any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involves hitting (“smacking”, “slapping”, “spanking”) children, with the hand or with an implement – a whip, stick, belt, shoe, wooden spoon, etc. But it can also involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, forcing children to stay in uncomfortable positions, burning, scalding or forced ingestion (for example, washing children’s mouths out with soap or forcing them to swallow hot spices). In the view of the Committee, corporal punishment is invariably degrading. In addition, there are other non-physical forms of punishment that are also cruel and degrading and thus incompatible with the Convention. These include, for example, punishment which belittles, humiliates, denigrates, scapegoats, threatens, scares or ridicules the child.

10. Article 28(2) of UNCRC requires the State parties to *“take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child’s human dignity and in conformity with the present Convention.”* Similarly, Article 29(1) (b) of the Convention emphasises that the *“State parties agree that the education of the child shall be directed to the development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations”*. Further, Article 37(a) of UNCRC requires States Parties to ensure that *“no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”*. This is complemented by Article 19(1) of the Convention, which requires States to– *“Take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual*

abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.”

11. Article 19(2) lays down that– *“Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”*

Law in India

12. Article 21 of the Constitution of India which protects the right to life and dignity includes the right to education for children up to 14 years of age. Corporal punishment amounts to abuse and militates against the freedom and dignity of a child. It also interferes with a child's right to education because fear of corporal punishment makes children more likely to avoid school or to drop out altogether. Hence, corporal punishment is violative of the right to life with dignity.

13. Article 21A of the Constitution provides that *“the State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine.”* This fundamental right has been actualised with the enactment of Right of Children to Free and Compulsory Education Act, 2009.

14. Article 39(e) directs the State to work progressively to ensure that *“... the tender age of children are not abused”*. Article 39(f) directs the State to work progressively to ensure that *“children are given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity and that childhood and youth are protected against exploitation and against moral and material abandonment.”*

A crime

15. Till recently, the provisions of Sections 88 and 89 of the IPC were invoked to explain the power teachers exercised when inflicting corporal punishment. These two provisions in the chapter on ‘General Exceptions’ cover harms that may be caused without penal consequence. Section 88 exempts an act from being treated as an offence when the harm was caused *“to*

any person for whose benefit it is done in good faith". Section 89 exempts acts "done in good faith for the benefit of a person under 12 years of age ... by or by consent, either express or implied, of the guardian or other person having lawful charge of that person." However, contrary to Sections 88 and 89 of the IPC, the Gujarat High Court in its judgement ***Hasmukhbhai Gokaldas Shah v. State of Gujarat***, 17 November 2008, has clearly stated that "corporal punishment to child in present days ... is not recognised by law". Further, India is a State Party to the Convention on the Rights of the Child. The standard of 'the best interests of the child' is now a part of domestic law. In 2006, the Committee on the Rights of the Child explained this obligation further when it reiterated, in General Comment No. 8, "*the right of the child to protection from corporal punishment and other cruel or degrading forms of punishment*".

Right to Education Act, 2009

16. The Right of Children to Free and Compulsory Education (RTE) Act, 2009, which has come into force with effect from 1 April 2010, prohibits 'physical punishment' and 'mental harassment' under Section 17(1) and makes it a punishable offence under Section 17(2).

These provisions read as follows:

17. Prohibition of physical punishment and mental harassment to child – (1) No child shall be subjected to physical punishment or mental harassment. (2) Whoever contravenes the provisions of sub-section (1) shall be liable to disciplinary action under the service rules applicable to such person.

Sections 8 and 9 of the RTE Act place a duty on the appropriate Government and the local authority to "*ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds*". The RTE Act does not preclude the application of other legislation that relates to the violations of the rights of the child, for example, booking the offenses under the IPC, etc.

The Juvenile Justice (Care and Protection of Children) Act, 2000

18. The Juvenile Justice (Care and Protection of Children) Act, 2000 is an important statute that criminalises acts that may cause a child mental or physical suffering. Section 23 of the JJ Act, 2000 states as follows:

“Whoever, having the actual charge of, or control over, a juvenile or the child, assaults, abandons, exposes or wilfully neglects the juvenile or causes or procures him to be assaulted, abandoned, exposed or neglected in a manner likely to cause such juvenile or the child unnecessary mental or physical suffering shall be punishable with imprisonment for a term which may extend to six months, or fine, or with both.” 5.5.2 Section 23 covers the actions of anyone who has “actual charge or control over” a child.

While Section 23 is likely to be applied most often to personnel in childcare institutions regulated by the JJ Act, it arguably applies to cruelty by anyone in a position of authority over a child, which would include parents, guardians, teachers and employers. National Commission for Protection of Child Rights (NCPDR) has prepared Guidelines for Eliminating Corporal Punishment in Schools, which is available on http://www.ncpcr.gov.in/view_file.php?fid=108 suggests following measures.

Remedy

19. The ‘right to remedy’ includes providing (a) equal and effective access to justice; (b) adequate, effective and prompt reparation for the harm suffered; (c) access to relevant information concerning violations and reparation mechanisms. Effective reparation should include restitution, compensation, rehabilitation, satisfaction and guarantee of non-repetition. It is pertinent therefore that the State Governments which have to ensure their State rules provide for better implementation of the RTE, 2009, make suitable legal provisions for ‘effective reparation’ in cases of corporal punishment. All educational institutions including schools and hostels, government as well as private, are custodians of children during the time the children are on their premises. It is thus the responsibility of the management/administration of the school/institution to ensure that children are safe from all forms of violence, including corporal punishment. Therefore, along with the school teacher, warden or the staff of the school/institution that has inflicted violence on the child, the

management/administration of the school/institution and their respective education administrators/managements at the higher levels should also be held responsible.

20. In every case of violence against children the respective management/administration should conduct an independent investigation, thus taking responsibility for what goes on in school/institution and not rely simply on enquiries conducted by the school/institution. In any case of child abuse, if the parent withdraws the case, the designated authority should take cognisance of the offence and proceed without harming the child and taking strict action against the accused.

Duty of the Government

21. As required under Section 32(1) of the RTE Act, State Governments and UT Administrations should designate appropriate 'local authority' and notify the same to all concerned for the purpose of redressing the grievances relating to corporal punishment and discrimination. Such 'local authority' should be a member of the District Child Protection Society (DCPS) which exists under the Integrated Child Protection Scheme (ICPS) and is headed by the District Collector/Magistrate/Deputy Commissioner. The DCPS should function as the District Level Committee for the purpose of corporal punishment under the Chairpersonship of the District Collector/Magistrate/Deputy Commissioner and the concerned Sub-divisional Magistrate (SDM) should be its ex officio Member Secretary/Convener. The District Collector/Magistrate/Deputy Commissioner should receive the complaints of physical punishment, mental harassment and discrimination in schools and get these redressed within a reasonable timeframe. It should also be his responsibility to take *suo motu* cognisance of grave cases of corporal punishment and to take remedial measures as per law expeditiously. Immediately upon being informed about the occurrence of a case of corporal punishment, it should be the duty of the SDM concerned to immediately ensure that the CPMC undertakes a preliminary fact-finding exercise. In a matter where a child while in school suffers from corporal punishment, resulting in death (homicide or suicide), sexual abuse or serious/grievous mental or physical injury, the SDM concerned should rush to the school as soon as he comes to know about the incident and get the preliminary enquiry organised immediately under his direct

supervision. He should ensure that the preliminary enquiry is completed within 7-10 days. In cases of suicide/sexual harassment/hospitalisation resulting due to the action of a teacher/ staff of the school, the accused should be suspended immediately until the investigations by the SDM and police are over.

22. As soon as the preliminary enquiry report of the CPMC is made available to the designated SDM, he/ she should independently assess the report and verify the facts, wherever he/she has doubt. If he/she is convinced that a prima facie case exists then, speedily and without any delay whatsoever prefer a complaint in writing to the local police station at the earliest but not later than one month from the date of the incident, asking them to set the process of law in motion.

23. In all complaints of corporal punishment preferred by the concerned SDM, it should be the duty of the Station House Officer/Police Station in-Charge to immediately register it as First Information Report (FIR) and forward a copy of the same to the concerned SDM, CPMC and the school management and the parents/guardian of the affected child forthwith. He should ensure that all relevant penal provisions are reflected in the FIR, including that of IPC, the Juvenile Justice (Care and Protection of Children) Act, 2000, etc.

24. Thereafter, the case should be entrusted to the Child Welfare Officer (CWO) of the local police station to take it to logical conclusion from the police side. He should immediately proceed in apprehending the accused in cognisable offences and complete his/her investigation within a reasonable timeframe. He should file the charge-sheet in the court of the concerned magistrate with a copy of the same being endorsed to the concerned SDM within a reasonable timeframe but preferably within 3 months from the date of registration of FIR. He/she should ensure that, irrespective of the gravity of the alleged offence(s), no child/teacher/staff/parent witness from the school or the neighbourhood who has sufficient knowledge of the incident are examined in the police station for the purpose of investigation. His interaction with the children in the school or neighbourhood should be in a non-intimidating manner and should be in the presence of their parents and the legal aid member of the concerned CPMC.

Adequate Compensation

25. Once the enquiry by the SDM is complete, he should recommend through the Collector to the State Government for paying adequate compensation to the child victim or his family in light of the gravity of the case within a definite timeframe. The same may be recovered by the government from the school in due course.

26. All the School Education Boards, including KVS, ICSE, CBSE and State Boards should take *suo motu* cognisance of the incidents of corporal punishment in the schools affiliated to them and to get the same inquired into within a reasonable timeframe. The School Boards should maintain a multi-disciplinary panel of professionals (State-wise) for the purpose of independent enquiry. They should constitute a Grievance Redressal Cell to receive complaints of corporal punishment and to take appropriate actions in such matters expeditiously. These Cells should also work out strategies for preventing such incidents in schools affiliated to them. One such strategy should be to ask the affiliated schools to organise sensitisation/ orientation programmes for teachers on corporal punishment issues from time to time. These Cells should also suitably advise the said Boards in addressing the issue from a larger perspective.

27. The School Boards should issue Guidelines to the schools affiliated to them, stipulating that 'corporal punishment-free environment' would be one of the conditions for granting affiliation/recognition/NOC to them. Similarly, they should also stipulate that 'practice of physical punishment/mental harassment' would be one of the grounds for withdrawal of affiliation/recognition/NOC granted to them. The School Boards should also issue instructions immediately to all schools affiliated to them to abide by the provisions of the Right of Children to Free and Compulsory Education (RTE) Act, 2009 as well as the Rules and Guidelines framed/issued/notified there under.

28. The teacher and the school also shall be liable to pay compensation to the injured child according to law. The Commission directs the KVS, headquarters and regional directors to voluntarily disclose whether they have framed policy as advised by the NCPCR to eliminate the corporal punishment in their schools, details of incidents of corporal punishments and action taken against liable teachers, compensation to be paid and amount of compensation

paid to the victims etc, every year, beginning with 2015-16, within three months. The Commission recommends that each school shall publish such a report every year, which shall be the model for other school. It will go a long way in making school a place of pleasant learning free from assaults and humiliations. The KVS also should have a policy of paying some amount as compensation to the victim children and that amount should be deducted from the salary of liable teacher. The public authority is directed to collect details of teachers punished for corporal assaults on children including the case of Mr. Yagya Dutt Arya. The Commission directs the KVS headquarters to circulate copy of this order to all schools and regional offices. Disposed of.

(M. Sridhar Acharyulu)
Central Information Commissioner

Authenticated true copy

(Dinesh Kumar)
Deputy Registrar

Addresses of the parties:

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