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WHEN LAW COLLIDES WITH CULTURE: ENDING CORPORAL PUNISHMENT OF CHILDREN IN SRI LANKA

R.M.T.S.K. Ratnayake[†]

Abstract

International Human Rights law prohibits violence against children, aiming for their full and harmonious development. However, children are often culturally subjected to violence and harsh punishments are inflicted as result. This tension between cultural practices and international legal norms can hinder the implementation of these norms in domestic settings.

Sri Lanka, an early signatory to the United Nations Convention on the Rights of the Child (UNCRC), is still lagging in implementing these rights, including those concerning violence against children, including corporal punishment. The article explores the cultural foundations of resistance to prohibit corporal punishment on children in Sri Lanka, focusing on the legal framework and the cultural reasons behind this resistance. A qualitative textual analysis is used to analyze the current state of prohibition of corporal punishment in Sri Lanka.

Keywords: Human Rights, international legal norms children, corporal punishment, Sri Lanka.

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I. Introduction

Communities around the world pay significant attention to children's well-being, as it is well-accepted that 'children are the future'. The same saying about children may be seen behind two different ways children are treated, which may collide with each other. On one hand, international human rights law - both general rules and the ones that specifically focus on the protection of children - prohibits violence against children. Going beyond the general rights that human beings are entitled to, children are afforded particular care under international law considering the need for the full and harmonious development of children to prepare to live individual lives in society as they grow up.

Children in many cultures are subjected to violence and harsh punishment on the other hand, with the view of disciplining and socializing them, which is believed to be eventually contributing to a disciplined society. In other words, while child rights, along with other human rights create international norms that intend to ensure the dignity and physical integrity of children that would lead to peaceful societies, the cultural practices of using physical force on children as punishment may aim at creating a disciplined society.

Therefore, even if a country accepts these norms in the international plane, cultural practices that contradict them may hinder the implementation of those norms as law in domestic settings. These rights-based norms are viewed by the 'non-Western world' as being based on Western values and are often rejected as unsupportable when they challenge geographical or cultural nuances. Sri Lanka is no exception to this tension between cultural practices and international legal norms in terms of the domestic enforcement of human rights standards including child rights. Albeit being an early

signatory to the Convention on the Rights of the Child (CRC)¹ Sri Lanka is still behind in the full implementation of the rights under the Convention, including those against violence upon children that *inter alia* requires the prohibition of corporal punishment.

The Committee on the Rights of the Child (UNCRC) 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’.² A range of violent acts on children including hitting, kicking, shaking or throwing, scratching, pinching, biting, pulling hair or boxing ears and being forced into stressful positions could be considered corporal punishment under this definition.³ A child being subjected to such corporal punishment as a method of discipline is common in Sri Lanka, not only at schools or childcare facilities but also in their households. As per a study on child disciplinary methods practised in schools in Sri Lanka, conducted by the National Child Protection Authority of Sri Lanka (NCPA) in 2017, at least 80.4% of the students have experienced at least one incident of corporal punishment.⁴ Incidents of corporal punishment imposed by parents on their children hardly get noticed or reported as this is perceived as a common and justified occurrence.

While experts over the years have emphasized the negative implications of corporal punishment including the escalation of physical abuse, depression, hostility and lowered academic

¹ Convention on the Rights of the Child, (Nov. 20, 1989), 1990, 1577 U.N.T.S. 3 [Hereinafter CRC]

² General comment No. 8 (2006): The Right of the Child to Protection from Corporal Punishment and Other Cruel or Degrading Forms of Punishment (Arts. 19; 28, Para. 2; and 37, *inter alia*), U. N. Comm. on the Rights of the Child, at 11, CRC/C/GC/8 (Mar. 2, 2007) [Hereinafter CRC General Comment No. 8]

³ *Id*

⁴ National Child Protection Authority. A Study on Child Disciplinary Methods Practiced in Schools in Sri Lanka. 57. (2017) [Hereinafter NCPA Study]

performance⁵, most of the public has been turning a blind eye to the many incidents of such gruesome violence on children. Concerned by the high number of children being subjected to abuse and violence and corporal punishment remaining legal in homes, schools and alternative care settings international bodies⁶, international and non-governmental organizations,⁷ as well as the NCPA⁸ have reiterated the need for an absolute ban on corporal punishment in Sri Lanka, in conformity with its international obligations. Sri Lanka has made some progress over the years on the repression of corporal punishment of children by the issuance of directives to teachers via the Ministry of Education's circulars, repeal of corporal punishment as a penalty for criminal offences⁹ and court decisions that are discussed below. However, the legal framework is yet to impose a

⁵ *Id.* at 2.

⁶ The Human Rights Committee in concluding observations on the 5th periodic report on Sri Lanka under the International Covenant on Civil and Political Rights (ICCPR): CCPR, at ¶19, U.N.Doc. CCPR/C/LKA/CO/5 (Nov. 21, 2014) and concluding observations on Sri Lanka under the ICCPR: CCOR, at ¶ 11, U.N. Doc. CCPR/CO/79/LKA (Dec. 1, 2003); and Committee on the Rights of the Child in concluding observations on the combined 5th and 6th reports of Sri Lanka: CRC, at ¶ 21-21, U.N. Doc. CRC/C/LKA/CO/5-6 (Mar. 2, 2018), concluding observations on the report submitted by Sri Lanka: CRC, at ¶ 40-41, U.N. Doc. CRC/C/LKA/CO/3-4 (Oct. 19, 2010) and Concluding observations on Sri Lanka at the Consideration of Reports Submitted by States Parties under Article 44 Of The Convention: CRC, at ¶ 28-29, UN Doc. CRC/C/15/Add. 207 (July 2, 2003); and the Committee against Torture in concluding observations on Sri Lanka at Consideration of reports submitted by States parties under article 19 of the Convention, CAT, at ¶30, UN. Doc. CAT/C/LKA/CO/3-4 (Dec. 8, 2011).

⁷ E.g., United Nations Children's Fund (UNICEF) - Country Office Annual Report: Sri Lanka (2019), Country Office Annual Report: Sri Lanka (2021) and Country Office Annual Report: Sri Lanka (2022); and End Violence Against Children & End Corporal Punishment, *Country Report for Sri Lanka*, End Corporal Punishment (Dec. 2022), <http://www.endcorporalpunishment.org/wp-content/uploads/country-reports/SriLanka.pdf>.

⁸ NCPA Study, *supra* note 4.

⁹ By Corporal Punishment Repeal) Act, No. 23 of 2005.

complete prohibition of corporal punishment on children. This is often attributed to the resistance in the society.¹⁰

Against this backdrop, the author explores the cultural foundations of this resistance to prohibit corporal punishment of children in Sri Lanka to comply with the international obligations of the State through a qualitative textual analysis.

The study is divided into two parts. In the first part, reports and concluding observations of international bodies and organizations, as well as secondary data from empirical studies are used in analyzing the current state of prohibition of corporal punishment in Sri Lanka. Further, international legal instruments, as well as domestic legislation, case law and other regulations would be used as primary resources in this regard. In the second part, the text of judicial decisions and non-traditional sources that include creative literature will be explored as primary resources through a descriptive analysis, to understand the cultural foundations against a complete prohibition shaped by moral, psychological and imaginative forces that create justification of corporal punishment on children.

In this study, the author follows James Boyd White's position that different forms of 'dead speech' i.e., cliché and cultural expressions or slogans affect the mind to make 'dehumanization' possible¹¹ and explores such 'forces' that make the eradication of corporal punishment on children in Sri Lanka far from a reality. Rather than making recommendations for legal reform, the author utilizes a descriptive approach to explore the cultural reasons that the recommendations that have already been made for legal reform or such attempts of reform in compliance with Sri Lanka's international legal obligation to prohibit corporal punishment on children have been unsuccessful.

¹⁰ UNICEF Country Office Annual Report: Sri Lanka (2021), P.2.

¹¹ JAMES BOYD WHITE, *LIVING SPEECH: RESISTING THE EMPIRE OF FORCE* (1st ed. 2006).

PART I – State of the Legal Prohibition of Corporal Punishment on Children in Sri Lanka

II. The International Legal Prohibition

Initially, the dignity and physical integrity of all human beings were upheld by general human rights instruments - namely, the International Bill of Rights that comprises the Universal Declaration of Human Rights,¹² the International Covenant on Civil and Political Rights,¹³ and the International Covenant on Economic, Social and Cultural Rights.¹⁴ Corporal punishment contradicts the ‘inherent human dignity of all human beings’, a fundamental guiding principle of the International Bill of Rights and human rights law in general. The UDHR in its preamble recognized that the foundation of freedom, justice and peace in the world is ‘[t]he recognition of the inherent dignity and the equal and inalienable rights of all members of the human family ...’.¹⁵ Article 1 of the UDHR states that ‘[a]ll human beings are born free and equal in dignity and rights’¹⁶, and this is echoed in both preambles of the ICCPR and ICESCR refer to the rights being ‘derive[d] from the inherent dignity of the human person’.¹⁷ The International Bill of Rights contains specific Articles that are particularly relevant to the eradication of corporal punishment. Article 5 of the UDHR and Article 7 of ICCPR tackle the matter of freedom from ill-treatment angle. Both provisions uphold that ‘[n]o one shall be subjected to torture or cruel, inhuman

¹² Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/RES/217(III) (Dec. 10, 1948) [Hereinafter UDHR]

¹³ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 [Hereinafter ICCPR], Preamble, Art. 7 & 10

¹⁴ International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 933 U.N.T.S. 3 [Hereinafter ICESCR], Preamble, Art. 12 & 13

¹⁵ UDHR, *supra* note 12, Preamble.

¹⁶ UDHR, *supra* note 12, Art. 1.

¹⁷ ICCPR, *supra* note 13, Preamble; and ICESCR, *supra* note 14, Preamble .

or degrading treatment or punishment'.¹⁸ The Human Rights Committee in General Comment No. 20¹⁹ recognized that the prohibition under Article 7 of the ICCPR 'must extend to corporal punishment, including excessive chastisement ordered as punishment for a crime or as an educative or disciplinary measure'.²⁰ The committee further emphasized that the protection under Article 7 extends to 'in particular, children, pupils and patients in teaching and medical institutions'.²¹ The ICESCR addresses it from a rights to health and education perspective.²² This was affirmed by the Committee on Economic, Social and Cultural Rights by General Comment No. 13, where the committee stated that corporal punishment contradicts, and other aspects of school discipline may affect the dignity of the individual.²³

Addressing corporal punishment of children from a 'freedom from ill-treatment' point of view, the Convention against Torture²⁴ incurs obligations on States Parties to 'take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.'²⁵ However, for corporal punishment to qualify as an offence established under obligations of the CAT, such act should amount to 'torture', as defined by Article 1 of the Convention. 'Torture' according to the CAT is

¹⁸ UDHR, *supra* note 12, Art. 5; ICCPR, *supra* note 13, Art. 7.

¹⁹ General comment No. 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), U. N. Human Rights Comm., at ¶ 5, A/44/40 (Mar. 10, 1992) [Hereinafter CCPR General Comment No. 20].

²⁰ *Id.*

²¹ *Id.*

²² ICESCR, *supra* note 14, Art. 12

²³ General Comment No. 13: The right to education (article 13 of the Covenant), Comm. on Economic Social and Cultural Rights, at. ¶ 41, U. N. Doc. E/C.12/1999/10 (Dec. 8, 1992) [Hereinafter CESCR General Comment No. 13].

²⁴ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (Dec. 10, 1984), 1465 U.N.T.S. 85 [Hereinafter CAT].

²⁵ *Id.* Art. 2.

‘any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for [a] purpose...when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity’²⁶.

However, the Committee against Torture (UNCAT), discussing the implementation of Article 2 of the Convention, in General Comment No. 2 stated that ‘measures required to prevent torture must be applied to prevent ill-treatment’ that may not amount to torture as well, and such obligation is non-derogable.²⁷ The committee further emphasized that ‘[s]tate part[ies] should prohibit, prevent and redress torture and ill-treatment in all contexts of custody or control, for example, in prisons, hospitals, schools, institutions that engage in the care of [*inter alia*] children ..., as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm’.²⁸

The adoption of the CRC, considering the special requirements of care and assistance, marked a milestone in the international protection of children’s rights. This Convention contains provisions that address violence against children. Article 19 of the CRC requires ‘[s]tates Parties [to] take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence ... while in the care of parent(s), legal guardian(s) or any other person who has the care of the child’.²⁹ Moreover, Article 28(2) of the same Convention incurs an obligation on States Parties to ‘take all appropriate measures to ensure that school discipline is administered in a manner consistent

²⁶ *Id.* Art. 1

²⁷ General Comment No. 2: Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Comm. against Torture, at. ¶ 3, U. N. Doc. CAT/C/GC/2 (Jan. 24, 1992) [Hereinafter CAT General Comment No. 2].

²⁸ *Id.* at ¶ 15.

²⁹ CRC, *supra* note 1, Art. 19.

with the child's human dignity and in conformity with the ... Convention'.³⁰ Neither of these Articles contains express mentions of corporal punishment nor does the *travaux préparatoires* refer to this during the drafting. However, the UNCRC in General Comment 08 recognized that the CRC is a growing instrument and clarified that the Convention requires States to prohibit and eliminate all corporal punishment of children in their homes, schools and other institutions.³¹ This was further affirmed by the Committee's General Comment 13 on the right of the child to freedom from all forms of violence. In the legal analysis of the scope of Article 19, the Committee observed corporal punishment to be 'invariably degrading'.³² Further, Article 37 (a) of the CRC obliges States Parties to ensure that 'no child [is] subjected to torture or other cruel, inhuman or degrading treatment or punishment'.³³ This complemented by Article 19 obliges State Parties to take legislative, administrative, social and educational measures to eliminate corporal punishment and other cruel and degrading forms of punishment on children.³⁴

Despite all these legal obligations, elimination of the corporal punishment on children appears to be far from a reality, not only in Sri Lanka but around the world in general. As at April 2022, only 63 States had achieved this prohibition in all settings, including the home,³⁵ while approximately 65% of the States Parties still allow corporal punishment at home and in other settings.³⁶ The UNCRC noted that States 'have sometimes suggested that some level of

³⁰ CRC, *supra* note 1, Art. 28(2).

³¹ CRC General Comment No. 8, *supra* note 2, ¶ 20.

³² General Comment No. 13: The right of the child to freedom from all forms of violence, Comm. on the Rights of the Child, at. ¶ 24, U. N. Doc. CAT/C/GC/2 (Jan. 24, 1992) [Hereinafter *CRC General Comment No. 13*].

³³ CRC, *supra* note 1, Art. 37(a).

³⁴ CRC General Comment No. 8, *supra* note 2, ¶ 18.

³⁵ Rep. of the Comm. on the Rights of the Child at the 77th Session of the U. N. G.A., at ¶ 34 U. N. Doc. CRC /77/41 (2022).

³⁶ *Id.*

‘reasonable’ or ‘moderate’ corporal punishment can be justified as in the ‘best interests’ of the child,³⁷ when elimination of corporal punishment was raised with them. However, the committee stressed the:

interpretation of a child’s best interests must be consistent with the whole [CRC], ... [and] it cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading punishment, which conflict with the child’s human dignity and right to physical integrity.³⁸

This proposition of the States could be a reflection of the domestic cultural practices. Noting this traditional acceptance of corporal punishment domestically, the committee further indicated that a total eradication would require more than mere legal prohibition within States to change the attitudes and practice.³⁹

III. Corporal Punishment in Sri Lanka

A. Legal Framework

Sri Lanka has a high prevalence of corporal punishment of children, despite being a States Party to all the key international human rights instruments that require measures to be taken towards the eradication of it. As a State that follows the dualist tradition - under which a dichotomy between international law and national law is maintained - international law receives validity domestically via the enactment of laws that recognize such international norms.⁴⁰ Sri Lanka signed the CRC in January 1990 and ratified it in July 1991. However, Sri Lanka’s legal framework is yet to be updated to address the specific rights of children, to confirm with international law. Although a

³⁷ CRC General Comment No. 8, *supra* note 2, at ¶ 26.

³⁸ *Id.*

³⁹ CRC General Comment No. 8, *supra* note 2, at ¶ 45.

⁴⁰ *Singarasa v. Attorney General* (2013) 1 SLR 245 (Sri Lanka).

Children's Charter was adopted in 1992, it does not have any legally binding force, as it is considered merely to be a document that guides policy. An amendment to the penal code⁴¹ was also made as a reaction to ratifying the CRC, but this does not ensure an absolute ban on corporal punishment. Against this backdrop, existing legal provisions that do not particularly address corporal punishment are often used to obtain legal redress.

Following the approach to consider corporal punishment as a form of ill-treatment based on the implications it has on dignity, and grievous acts of corporal punishment amounting to torture, most incidents of corporal punishment are addressed through fundamental rights jurisprudence. Reflecting the wording of the UDHR, Article 11 of the Constitution of Sri Lanka ensures that, '[n]o person shall be subjected to torture or cruel, inhuman or degrading treatment or punishment' as a fundamental right.⁴² The earliest fundamental rights case where an assault on a child by a teacher was held to be cruel and degrading under Article 11 of the Constitution of Sri Lanka is *Bandara v. Wickremasinghe*.⁴³ In this case, from 1995, the court examined an incident regarding a 17-year-old boy being assaulted by a teacher as a disciplinary measure. Based on medico-legal evidence on both mental and physical effects of the incident, the court concluded that it was both inhuman and degrading, because '[b]eing a teenager, he was a person who is likely to suffer humiliation and nervous shock by violence of the kind complained of by him.'⁴⁴ Although the Supreme Court did not refer to the treatment of the child as 'corporal punishment', two recent decisions of the Supreme Court - *Karunapala v. Siriwardhana*⁴⁵ and *Karunaratne v.*

⁴¹ Penal Code (Amendment) Act, No.22 of 1995 (Sri Lanka) [Hereinafter Penal Code Amendment].

⁴² Const. of the Democratic Socialist Republic of Sri Lanka, art. 11 (Sri Lanka) [Hereinafter *the Constitution of Sri Lanka*].

⁴³ *Bandara v. Wickremasinghe* (1995) 2 SLR 168 (Sri Lanka).

⁴⁴ *Id.* 173.

⁴⁵ *Karunapala v. Siriwardhana*, SC/FR/97/2017 (2021) (Sri Lanka).

*Koswatte*⁴⁶ - made express reference to corporal punishment in analyzing the treatment children received at school. *Karunaratne v. Koswatte*⁴⁷ is a case regarding two children being severely caned by the school principal.⁴⁸ The contention that corporal punishment was imposed in good faith as a disciplinary measure was completely disposed of by the Supreme Court in this case, after an analysis of Sri Lanka's obligations under Articles 19 and 28 of the CRC⁴⁹. After admitting that he caned the students, the respondent contended that 'he had had no intention of subjecting the Petitioners to cruel and inhuman treatment or punishment and acted in good faith to maintain discipline in the school and to discourage such behaviour among the students, in the future'.⁵⁰ But the court rejected this argument as 'neither mitigat[ing] nor diminish[ing] the gravity of his action'.⁵¹ *Karunapala v. Siriwardhana* is celebrated as a milestone in the law relating to the prohibition of corporal punishment in Sri Lanka.⁵²

This case is based on an incident where a child was assaulted by way of a slap across the face by a teacher.⁵³ Referring to the international obligations under the CRC, and the CRC General Comment No. 08, the court clarified the need to use alternative methods of discipline that do not incur mental or physical harm.⁵⁴ It was further recognized by the court that 'the elimination of the practice of Corporal Punishment may not be achieved through isolated incidents, but a profound understanding by those entrusted with the care of children that violence is not a justifiable means to the end of discipline'.⁵⁵

⁴⁶ *Karunaratne v. Koswatte*, SC/FR/139/12 (2022) (Sri Lanka).

⁴⁷ *Id.*

⁴⁸ *Id.* at ¶ 2.

⁴⁹ *Id.* at ¶ 31 – 35.

⁵⁰ *Id.* 5, at ¶ 25.

⁵¹ *Id.* at ¶ 42.

⁵² *Karunapala Case*, *supra* note 45.

⁵³ *Id.* at 5.

⁵⁴ *Id.* at 12-13.

⁵⁵ *Id.* at 25.

Penal Code (Amendment) Act, No.22 of 1995 introduced the offence of 'cruelty to children' as Section 308A of the Penal Code as follows:

1. Whoever, having the custody, charge or care of any person under eighteen years of age, wilfully assaults, ill-treats, neglects, or abandons such person or causes or procures such person to be assaulted, ill-treated, neglected, or abandoned in a manner likely to cause him suffering or injury to health (including injury to, or loss of sight of hearing, or lingo or organ of the body or any mental derangement), commits the offence of cruelty to children.
2. Whoever commits the offence of cruelty to children shall on conviction be punished with imprisonment of either description for a term not less than two years and not exceeding ten years and may also be punished with a fine and be ordered to pay compensation of an amount determined by court to the person in respect of whom the offence was committed for the injuries caused to such person.⁵⁶

Here, 'injuries' means both mental and physical trauma according to the amended explanation of this section.⁵⁷ While it appears that approximately 2000-3000 cases are being reported to the NCPA under this offence per year⁵⁸, it does specifically address corporal punishment. As mentioned above, this offence or any other criminal offence expressly prohibits corporal punishment. This provision read together with Section 83 that states, '[n]othing, which is done in good faith for the benefit of a person [*inter alia*] under twelve years of age, ... by or by consent, either express or implied, of the

⁵⁶ Penal Code Amendment, *supra* note 41, § 3.

⁵⁷ Added via the Penal Code (Amendment) Act, no.16 of 2006.

⁵⁸ As per the NCPA statistics, the following numbers were reported each year over the past decade: 2022 - 2096; 2021 - 2741; 2020 - 2237; 2019 - 2342; 2018 - 2413; 2017 - 2144; 2016 - 2180; 2015 - 2317; 2014- 2160; 2013- 2030; and 2012- 1516. Statistics obtained from: 1929 Statistics, *National Child Protection Authority*, <https://childprotection.gov.lk/index.php/en/resource-centre/statistics-3> (Aug. 31, 2023, 5:34 PM).

guardian or other person having lawful charge of that person, is an offence',⁵⁹ negates the purpose of inclusion of this provision. This could mean that a parent rodding a child under twelve years, or a teacher assaulting a student below 12, in good faith and as a disciplinary measure, may not amount to an offence.

Another provision in the Penal Code stands on the way to curb corporal punishment. It is section 341(i) that provides an illustration as an exemption to the use of criminal force, which states the following: 'A, a schoolmaster, in the reasonable exercise of his discretion as master, flogs B, one of his scholars. A does not use criminal force to B, because although A intends to cause fear and annoyance to B, he does not use force illegally.'⁶⁰ Even the Supreme Court in *Karunapala v. Siriwardhana* found this provision to be archaic.⁶¹ Another such archaic provision also exists as the exception to the offence of child cruelty under Section 71 of the Children and Young Persons Ordinance No. 48 of 1939.⁶² Accordingly, while an assault or ill-treatment of a child or a young person by a custodian or a caretaker is considered an offence,⁶³ it also provides that it would not affect 'the right of any parent, teacher, or other person having lawful control or charge of a child or young person to administer punishment to him'.⁶⁴

B. Institutional Framework

The Ministry of Education has attempted to address corporal punishment via internal circulars; by issuing directives to the provincial and zonal education secretaries and directors, as well as

⁵⁹ Penal Code Ordinance No. 2 of 1883 (Sri Lanka), § 83 [Hereinafter *Penal Code*].

⁶⁰ *Id.* § 431(i).

⁶¹ *Karunapala v. Siriwardhana*, *supra* note 45, at 14.

⁶² Children and Young Persons Ordinance No. 48 of 1939 (Sri Lanka), § 71.

⁶³ *Id.* § 71 (1).

⁶⁴ *Id.* § 71 (6).

principles of government and government-approved private schools. Circular No. 12/2016, which is currently in force recognizes the concept of *loco parentis*, which allows the teachers, the place of parents, to recognise that they have a responsibility to ensure the children's well-being in the place of parents.⁶⁵

The circular reminds Sri Lanka's obligations under the CRC⁶⁶ and refers to research conducted on corporal punishment which revealed that the desired results have not been achieved by corporal punishment and instead have negative consequences such as the impact on the learning process and the tendency of engaging in antisocial acts.⁶⁷ Further, it directs school administrators to use alternatives to corporal punishment, i.e. suspension of classes or privileges.⁶⁸ It also reminds us that the teacher would have to face fundamental rights action under Article 126 of the Constitution, prosecution for a criminal offence under Section 308A of the Penal Code as enumerated above, or internal disciplinary measures as per the establishment code.⁶⁹ This circular replaced circular no.17/2005 which also required corporal punishment not to be used in schools as a disciplinary measure and had similar content.⁷⁰

The Supreme Court in *Karunaratne v. Koswatte* held that the violation of this circular also constitutes an infringement of Article

⁶⁵ MINISTRY OF EDUCATION OF SRI LANKA, CIRCULAR NO. 12, පාසල තුළ විනය ආරක්ෂා කිරීම [MAINTAINING DISCIPLINE IN SCHOOL], (2016), § 2.1 [Hereinafter Circular No. 12/2016].

⁶⁶ *Id.* § 2.2.

⁶⁷ *Id.* § 2.3.

⁶⁸ *Id.* § 2.32.

⁶⁹ *Id.* § 2.4.

⁷⁰ MINISTRY OF EDUCATION OF SRI LANKA, CIRCULAR NO. 17, පාසල තුළ විනය ආරක්ෂා කිරීම [MAINTAINING DISCIPLINE IN SCHOOL], (2005) [Hereinafter Circular No. 17/2005].

12(1) of the Constitution, which ensures the right to equality before the law and equal protection of the law.⁷¹

The repercussions mentioned in these circulars that teachers would encounter if corporal punishment was inflicted on children, could be understood, in other words, as the different avenues for a victim to obtain redress. In addition to the three options mentioned above, Article 11 of the Constitution which recognizes freedom from ill-treatment as a fundamental right, triggers the possibility of complaining to the Human Rights Commission of Sri Lanka (HRCSL). According to Section 14 of the Human Rights Commission Act No. 21 of 1996, it has the mandate to investigate any allegation of infringement or imminent infringement of a fundamental right ‘on its own motion or on and complaint made to it by an aggrieved person or group of persons or a person acting on behalf of an aggrieved person or a group of persons’.⁷²

Complaints made on corporal punishment are a part of the large number of complaints received by the HRCSL on violations of Article 11 of the Constitution.⁷³ An examination of the recommendations issued by the HRCSL after such complaints demonstrates that the Commission has also followed a similar approach to the Supreme Court on corporal punishment of children by teachers. The HRCSL has emphasized the need to uphold the

⁷¹ Karunaratne v Koswatte, *supra* note 45, at ¶ 43

⁷² Human Rights Commission Act No. 21 of 1996 (Sri Lanka), § 14 [Hereinafter HRCSL Act]

⁷³ See Human Rights Commission of Sri Lanka Details of Complaints Received by Head Office & Regional Office -2022, <https://www.hrsl.lk/wp-content/uploads/2020/02/statistics-2022.pdf> (Aug. 20, 2023, 5:45 PM); Human Rights Commission of Sri Lanka Details of Complaints Received by Head Office & Regional Office - 2021, <https://www.hrsl.lk/wp-content/uploads/2020/02/statistics-2021.pdf> (Aug. 20, 2023, 5:48 PM); Human Rights Commission of Sri Lanka Details of Complaints Received by Head Office & Regional Office -2020, <https://www.hrsl.lk/wp-content/uploads/2020/02/statistics-2020.pdf> (Aug. 20, 2023, 5:50 PM).

Ministry of Education's circulars and recommended disciplinary action to be instituted against such teachers or school administrators who have imposed corporal punishment on students.⁷⁴ Further, the need to conduct programs to create awareness among school teachers about the circulars on the maintenance of discipline and the related fundamental rights was also highlighted by the HRCSL.⁷⁵

The National Child Protection Authority (NCPA) of Sri Lanka, established under Act No. 50 of 1998⁷⁶ is also an institution that has a key role in attaining a total prohibition of corporal punishment in Sri Lanka. The authority was established with the purpose of 'formulating a national policy on the prevention of child abuse and the protection and treatment of children who are victims of such abuse; for the coordination and monitoring of action against all forms of child abuse'⁷⁷

Therefore, it is entrusted with a range of functions, that include advising the government on measures to prevent and address child abuse, to recommend legal, administrative or other reforms required to prevent such abuse, to monitor the law on child abuse, and to

⁷⁴ ඩී. පද්මලතා ලියනගේ එ. එන්. ඩබ්ලිව්. ජයරත්න [Padmalatha Liyanage v. N. W. Jayantha], HRC/AP/533/2017(S) (Sri Lanka) ;ඩබ්ලිව්. ජේරේමලනා එ. විදුහල්පති, නයාපාන මහා විද්‍යාලය [W. Premarathna v. Principal, Nagahipitiya Maha Vidyalaya],HRC/K/130/suo motu/18 (Sri Lanka) ; ආර්. ඒ. ලලිත් රණසිංහ එ. ඩබ්ලිව්. බී. විමලසේන [R. A. Lalith Ranasinghe v. V. W. B. Wimalasena], HRC/1925/13 (Sri Lanka); ජී. ඩබ්ලිව්. ඩී. විමුක්ති නවනජන නිලකරත්න එ. ලියනගේ ගුණතිලක පින්තු [G. W. D. Wimukthi Nawanjana Thilakarathne v. Liyanage Gunathilake Pinthu] HRC/1622/15/I-23 (Sri Lanka); and මහානාම උපාලි ජයවර්ධන එ. ෆ්‍රයිස් ජෙලගේ [Mahanama Upali Jayawadhana v. Frasis Welage] HRC/1862/15/I-23 (Sri Lanka).

⁷⁵ ඩී. පද්මලතා ලියනගේ එ. එන්. ඩබ්ලිව්. ජයරත්න [Padmalatha Liyanage v. N. W. Jayantha], HRC/AP/533/2017 (S), 5 (Sri Lanka).

⁷⁶ National Child Protection Authority Act, No. 50 of 1998(Sri Lanka) [Hereinafter *NCPA Act*].

⁷⁷ *Id.* Preamble.

receive complaints relating to child abuse and where necessary, to refer such complaints to the appropriate authorities.⁷⁸ Recognizing corporal punishment as a form of child abuse, the NCPA has taken prevention and protection action over the years. For instance, in 2018, the Authority organized an ‘anti-corporal punishment drive’ to sensitize teachers, principals, heads of schools and institutes on the right of the child to protection from corporal punishment.⁷⁹ It also maintains a 24-hours hot-line; 1929 for the general public to inform the authority of such abuse of children.

C. Implementation and Gaps

Despite all these legal and institutional frameworks, Sri Lanka has not been successful to completely eradicating corporal punishment. The frameworks discussed above mostly address corporal punishment of children in public school settings. The law hardly addresses the incidents of corporal punishment at homes and alternative-care facilities. Private schools and tuition classes, which are not often subjected to state regulation or scrutiny of fundamental rights law are not directly bound by these obligations as well. Even though a range of laws and circulars address corporal punishment in public schools, it appears to be difficult to impose an absolute prohibition in practice.

These shortcomings have been highlighted by the UN treaty bodies, including the Human Rights Committee, UNCRC, and the UNCRC, in assessing the state of implementing Sri Lanka’s obligations respectively under the ICCPR, CRC and CAT. Referring to corporal punishment in schools, the UNCRC on several occasions observed that, although the Corporal Punishment Ordinance No. 16 of 1889 that provided for corporal punishment as a form of criminal

⁷⁸ NCPA Act, supra note 76, § 14.

⁷⁹ NCPA on Anti-Corporal Punishment Drive, THE SUNDAY TIMES (Feb. 11, 2018) <https://www.sundaytimes.lk/180211/education/education-news/ncpa-on-anti-corporal-punishment-drive-281238.html> (Oct. 31, 2023, 7:50 PM).

punishment administered by the courts was repealed by the Corporal Punishment (Repeal) Act, No. 23 of 2005, the Education Ordinance No. 31 of 1939 is yet to be abrogated.⁸⁰ About the same, both the Committee on the Rights of the Child and the Human Rights Committee have noted that, despite the existence of ministerial directives on corporal punishment not to be used as a measure of discipline or punishment in schools, the lack of their implementation and the absence of an express legal prohibition by law have allowed to it to be seen as an accepted form of discipline by teacher and principals.⁸¹ The UNCRC further recommended to 'ensure that laws prohibiting corporal punishment are effectively implemented and the legal procedures are systematically initiated ...',⁸²

Noting that '[c]orporal punishment continues to be accepted and practised as a form of discipline by parents and guardians',⁸³ the treaty bodies have called for the abrogation of corporal punishment on children at all settings, including schools, homes, and alternative care settings.⁸⁴ An inter-ministerial cabinet paper on the total

⁸⁰ See Committee on the Rights of the Child in concluding observations on the report submitted by Sri Lanka: CRC, at ¶ 40, U.N. Doc. CRC/C/LKA/CO/3-4 (Oct. 19, 2010); and concluding observations on Sri Lanka at the Consideration of Reports Submitted by States Parties under Article 44 Of The Convention: CRC, at ¶ 29, UN Doc. CRC/C/15/Add. 207 (July 2, 2003).

⁸¹ UN Human Rights Committee in concluding observations on Sri Lanka under the ICCPR: CCOR, at ¶ 11, U.N. Doc. CCPR/CO/79/LKA (Dec. 1, 2003); and the Committee on the Rights of the Child at the consideration of Reports Submitted by States Parties under Article 44 Of The Convention: CRC, at ¶ 28, UN Doc. CRC/C/15/Add. 207 (July 2, 2003).

⁸² Committee on the Rights of the Child in concluding observations on the report submitted by Sri Lanka: CRC, at ¶ 41, U.N. Doc. CRC/C/LKA/CO/3-4 (Oct. 19, 2010).

⁸³ UN Human Rights Committee in concluding observations on Sri Lanka under the ICCPR: CCOR, at ¶ 19, U.N. Doc. CCPR/CO/79/LKA (Dec. 1, 2003).

⁸⁴ Committee on the Rights of the Child in concluding observations on the combined 5th and 6th reports of Sri Lanka: CRC, at ¶ 21, U.N. Doc. CRC/C/LKA/CO/5-6 (Mar. 2, 2018), U.N. Doc. CRC/C/LKA/CO/3-4, *Supra* note 82, at ¶ 40, and Committee against Torture in concluding observations on Sri

prohibition of corporal punishment of children was drafted in 2019,⁸⁵ but the relevant drafting procedure did not end up producing a law. Referring to the challenges in achieving a total abrogation, UNICEF has noted that ‘no progress on prohibiting corporal punishment [in Sri Lanka] has been made given considerable resistance in society’⁸⁶. Implying the same, both the UNCRF and UNCRF have recommended raising awareness of the harmful effects of corporal punishment via well-targeted public campaigns.⁸⁷

This may trigger the curiosity as to why the Sri Lankan society resists a total prohibition of total punishment of children, despite the scientific evidence of the negative consequences of the practice. One may question whether it is due to the lack of awareness of such negative impact, or whether the socio-cultural beliefs create a barrier against the acceptance of scientific evidence that would incur a change of behaviour.

In the following part, the author explores such beliefs - mostly in the form of cliché - created in peoples’ minds and passed down over generations.

Lanka at Consideration of reports submitted by States parties under article 19 of the Convention, CAT, at ¶ 30, UN. Doc. CAT/C/LKA/CO/3-4 (Dec. 8, 2011).

⁸⁵ United Nations Children’s Fund (UNICEF) - Country Office Annual Report: Sri Lanka (2019), Country Office Annual Report: Sri Lanka (2019), at 3.

⁸⁶ United Nations Children’s Fund (UNICEF) - Country Office Annual Report: Sri Lanka (2019), Country Office Annual Report: Sri Lanka (2021), at 2.

⁸⁷ v Committee on the Rights of the Child in concluding observations on the combined 5th and 6th reports of Sri Lanka: CRC, at ¶ 21, U.N. Doc. CRC/C/LKA/CO/5-6 (Mar. 2, 2018), and U.N. Doc. CRC/C/LKA/CO/3-4, *Supra* note 82, at ¶ 40, in the consideration of Reports Submitted by States Parties under Article 44 Of The Convention: CRC, at ¶ 28, UN Doc. CRC/C/15/Add. 207 (July 2, 2003), and Committee against Torture in concluding observations on Sri Lanka at Consideration of reports submitted by States parties under article 19 of the Convention, CAT, at ¶ 30, UN. Doc. CAT/C/LKA/CO/3-4 (Dec. 8, 2011).

PART II – Factors behind the Resistance to Prohibit

IV. Interpretation of the Best Interest of the Child

Dignity and best interest of the child form the foundation of international law on the protection of children. Corporal punishment is neither in conformity with a child's dignity nor in the best interest of the child is a claim that emerged in the 20th century.⁸⁸ This has also been followed and affirmed by the UNCRC on several occasions, including in the General Comment 8. Referring to previous concluding observations, the committee stated that 'the practice [of corporal punishment] directly conflicts with the equal and inalienable rights of children to respect their human dignity and physical integrity'.⁸⁹

The CRC requires that the 'best interests of the child' should be a primary consideration in all actions concerning children.⁹⁰ It is a controversial principle of interpretation in international law,⁹¹ and is seen as 'value-laden, and to some extent indeterminate'.⁹² The UNCRC requires the interpretation of this principle to 'be consistent with the whole Convention, including the obligation to protect children from all forms of violence and the requirement to give due weight to the child's views'.⁹³ The committee further stated that the best interest of a child 'cannot be used to justify practices, including corporal punishment and other forms of cruel or degrading

⁸⁸ Michael D. A. Freeman, *Upholding the Dignity and Best Interests of Children: International Law and the Corporal Punishment of Children*, 73 LAW & CONTEMP. PROBS. 211, 215 (2010).

⁸⁹ General Comment No. 8, *supra* note 2, ¶ 7 & 21.

⁹⁰ CRC, *supra* note 1, Art. 3(1).

⁹¹ *supra* note 88, 216.

⁹² *Id.*

⁹³ General Comment No. 8, *supra* note 2, ¶ 26.

punishment, which conflict with the child's human dignity and right to physical integrity'.⁹⁴

It may also be argued that violence on children may be considered as a matter where there should be consensus,⁹⁵ but even despite General Comment 8, 'best interest of the child' is often used as a justification for corporal punishment on children. Freeman noted that the interpretation of this principle could also be a reflection of 'dominant meanings',⁹⁶ and that it could be seen as an 'alibi for dominant ideology, an alibi for individual arbitrariness, an alibi for family and more general social policies for which the law serves as an instrument'.⁹⁷ As observed further by Freeman, the 'best interest of the child' could also be distinguished as 'current best interests' and 'future-oriented best interests',⁹⁸ which may compete with each other at times. However, corporal punishment does not address any immediate interests, besides immediate compliance, which cannot be seen as an interest of the child as such. Supporters of corporal punishment on children often argue that the practice aims at correcting their behaviour, which would be for their own benefit in future. However, another 'future-oriented' interest of the child - the right not to be subjected to violence during childhood - would prevent negative psychological and social consequences. This on a State level highlights the tension between national sovereignty and the enforcement of international human rights standards.⁹⁹

In a study conducted on the teachers' attitudes towards corporal punishment, the majority of the sample 'agreed that children have a

⁹⁴ *Id.*

⁹⁵ *supra* note 88, 216.

⁹⁶ *supra* note 88, 217.

⁹⁷ *supra* note 88, 217 (quoting Irene Théry, 'The Interest of the Child' and the Regulation of the Post-Divorce Family, in CHILD CUSTODY AND THE POLITICS OF GENDER 78, 81 (Carol Smart & Selma Sevenhuijsen eds., 1989).

⁹⁸ *supra* note 88, 217.

⁹⁹ Fernando R. Teson, *International Human Rights and Cultural Relativism*, 25 VA. J. INT'L L. 869 (1984).

right to be protected against [corporal punishment] but many noted that rights have to be defined not according to the Western standards but according to the needs of Sri Lankan children'.¹⁰⁰ Further, as mentioned above, the UNCRC referred to the contention of certain States that some level of 'reasonable' or 'moderate' corporal punishment can be justified as in the 'best interests' of the child.¹⁰¹ Both these examples hint at 'ethnocentrism', where '[i]ndividuals ... presume that their own methods will be more successful than those employed in other societies'.¹⁰² However, it should also be noted that 'cultures are always dynamic, [and] it is within the realm of possibility that members of a community may eventually realize that they should reject a particular custom [or a practice]',¹⁰³ and law could be the agent of such change.

V. Cultural Attitudes in Sri Lanka

In *Karunapala v. Siriwardhana*, the court referred to the strong prevalence of the 'spare the rod and spoil the child' attitude towards the punishment of children in Sri Lankan culture that it observes to be archaic. In particular, the court referred to the Sri Lankan saying that means 'the child raised without beating and the curry made without stirring is useless'.¹⁰⁴ This saying, which also could be called a cliché, has been used to justify corporal punishment on children for ages. It was revealed in the abovementioned study on teachers' attitudes on corporal punishment that the practice is often justified *inter alia* about their own experience as students, religious

¹⁰⁰ Iresha M. Lakshman, *Can Sri Lankan teachers afford to spare the rod? Teacher attitudes towards corporal punishment in school*, COGENT SOCIAL SCIENCES, 4(1) (2018).

¹⁰¹ General Comment No. 8, *supra* note 2, ¶ 26.

¹⁰² Alison Dundes Renteln, *Corporal Punishment and the Cultural Defense*, 73 LAW & CONTEMP. PROBS. 253 (2010).

¹⁰³ *Id.* at 256.

¹⁰⁴ *Karunapala v. Siriwardhana*, *supra* note 45, at 17.

teachings and their lay theories of child-raising practices.¹⁰⁵ Culture may have a bearing on these attitudes as it affects both cognition and conduct.¹⁰⁶ Renteln noted that ‘the acquisition of cultural norms is for the most part unconscious ...’¹⁰⁷ Literature may play a key role in this process, where social beliefs - although they may not have any factual groundings, and are sometimes mere locutions - are passed down over generations. Although literature can only depict a particular view of the culture it portrays, an author is writing at a particular point in history, and is influenced by contemporary beliefs and values.¹⁰⁸ Accordingly, literature could also be a helpful resource for understanding the beliefs of people living in a particular geographic location or a period of history. Therefore, to understand the cultural justification of corporal punishment in children, this paper examines references to corporal punishment in 03 texts from Sri Lankan literature, that are often seen as key resources in children’s language education in schools up to date: the *Tila-mutthi Jātaka*, a story in Buddhist literature about a previous birth of Buddha, originally composed in Pali, passed down by word of mouth and then written at a later stage; a verse from the poem *Vadan Kavi Potha* (title roughly translated as ‘book of word-poems’); and Madol Roova (title means ‘Mangrove Island’ in English), a children’s novel originally written in Sinhala by the celebrated Sri Lankan author Martin Wickramasinghe.

A. *Tila-mutthi Jātaka*

Buddhism being the majority religion in Sri Lanka, Buddhist literature plays an influential role in Sri Lankan culture. Simply defined as stories relating to episodes in past births of the Buddha, jātaka stories are ‘intertwined with the development of doctrines

¹⁰⁵ *supra* note 100, at 9.

¹⁰⁶ *supra* note 102, at 256.

¹⁰⁷ *Id.*

¹⁰⁸ JENEEN NAJI ET. AL, NEW APPROACHES TO LITERATURE FOR LANGUAGE LEARNING 84 (2019).

about the Buddha', the path to Buddhahood, and guide how Buddhists should behave.¹⁰⁹ In many of the jātaka stories, Bodhisatta (as Buddha was called before his enlightenment) 'behaves as a good Buddhist should, demonstrating virtues and acquiring the perfections (*pāramitās*) ... sometimes his 'good' behaviour is more a demonstration of worldly wisdom, even at the expense of other (Buddhist or 'moral') qualities'.¹¹⁰ *Tila-mutthi Jātaka* is the 252nd of the jātaka stories contained in the *Tika Nipātha*, a Pali scripture containing Buddha's teachings. It has been translated into and was translated into several languages including Sinhala and English, and for this paper, the author refers to the English version of the jātaka stories as translated under the editorship of E. B. Cowell.¹¹¹

This story is about 'how a teacher chastised a pupil, and the pupil meditated revenge, but was appeased',¹¹² and Bodhisatta was the teacher in this story. While the prince was obtaining education under Bodhisatta, he repeatedly stole some sesame seeds that an old woman had spread out to dry. Upon the complaint of this woman and her request to 'teach [the] pupil not to do it again', the teacher 'caused two lads to take the young fellow by his two hands, and smote him thrice upon the back with a bamboo stick, bidding him take care not to do it again'.¹¹³ This treatment seems to be falling under the definition of corporal punishment as discussed above and appears to have had an impact on the student's dignity as well. In reaction, '[t]he prince was very angry with his teacher'.¹¹⁴ The prince held this grudge against the teacher even after he succeeded to the throne, and he asked the teacher to visit him in his palace with

¹⁰⁹ See generally, NAOMI APPLETON, *JATAKA STORIES IN THERAVADA BUDDHISM NARRATING THE BODHISATTA PATH* (2010).

¹¹⁰ *Id.* at 21.

¹¹¹ EDWARD BYLES COWELL, *THE JĀTAKA: OR, STORIES OF THE BUDDHA'S FORMER BIRTHS* (Sir Robert Chalmers, eds., 1895).

¹¹² *Id.* at xvi.

¹¹³ *supra* note 111, at 194-195 [emphasis added].

¹¹⁴ *supra* note 111, at 195.

revenge in his mind. The vivid description of the events that unfold thereafter demonstrates how abuse faced as a child would last in a person's mind even after they grow up. The former student, now the king says:

Ha, the place which my teacher struck still hurts me to-day!
He has come here with death written upon his forehead, to
die! Today his life must end!

And he repeated the first two verses :

Now I bethink me, for a few poor seeds, in days of yore.
You seized me by the arm, and beat me with a stick full sore.
Brahmin, are you in love with death, and do you nothing fear?
For seizing me and beating me, that now you venture here.¹¹⁵

The reaction of the teacher in the *jātaka* seems similar to the attitude of teachers towards corporal punishment in Sri Lanka today:

The gently born who uses blows ungentleness to quell-
This is right discipline, not wrath : the wise all know it well.

And so, great king, understand this yourself. Know that this is not just cause for anger. Indeed, if you had not been taught this lesson by me, you would have gone on taking cakes and sweets, fruit, and the like, until you became covetous through these acts of theft; then by degrees, you would have been lured on to house-breaking, highway robbery, and murder about the villages; the end would have been, that you would have been taken red-handed and haled before the king for a public enemy and a robber; and you would have come in fear of public punishment, when the king should say, 'Take this man, and punish him according to his crimes.' Whence could

¹¹⁵ *supra* note 111, at 195 [emphasis added].

have come all this prosperity which you now enjoy? Is it not through me that you have attained to such magnificence?¹¹⁶

The king eventually accepts that he would not have attained such magnificence if not for his teacher and made him the royal priest. Although the origin of the jātaka stories is time immemorial, this story reflects the attitude towards corporal punishment during the period when they were written into Pali scripture, approximately around the 5th Century BCE. By the reference to these scriptures in academic and religious texts over centuries as examples of noble behaviour according to Buddhism even in Sri Lanka, these stories have become part and parcel of the culture. Although there is no factual validity of the message in this story, nor a way of assessing such validity, *Tila-mutthi Jātaka* is often brought as an example to justify corporal punishment in the future-oriented best interest of children, namely to teach the student a lesson. Such influence of religious teachings on teachers' disciplinary practices involving corporal punishment was observed in the above study on teachers' attitudes as well.¹¹⁷ The study further revealed that several teachers are of the idea that if corporal punishment is administered 'without anger and hatred towards the student and with the intent of rectifying the behaviour of the student' and is often justified regarding their understandings of Buddhist idea on punishment¹¹⁸, which may have been inculcated in them through similar texts.

B. *Vadan Kavi Potha*

Another such text that justifies corporal punishment by teachers, which is often used in the school curricula up to date is the *Vadan Kavi Potha*. This is said to have been composed by a scholar named Attaragama Rajaguru Bandara, during the reign of King Keerti Sri Rajasinghe. The text referred to in this analysis was edited by Ven.

¹¹⁶ *supra* note 111, at 195 -196 [emphasis added].

¹¹⁷ *supra* note 100, at 8.

¹¹⁸ *supra* note 100, at 9-10.

Balangoda Ananda Maitreya Thero during the early 1900s. Verses 28 to 36 of this poem, *inter alia*, refer to the value of education and contain advice to the students. The 33rd verse of this poem, which had turned into a commonly used locution, has been often referred to by individuals as a justification for corporal punishment even today.

The verse in Sinhala is as follows:

වේවැල් කෝටු නාරං සියඹලා අ තු
 කෙහෙල් පොල් ඉරටු වැල් කසඹිලිය අ තු
 මෙහෙම ඉපල් මගෙ දැසට නොපෑ යු තු
 පමා නොවී එමි අකුරට මෙයින් ම තු

The verse can be translated into English as follows:

Cane sticks, mandarine and tamarind branches
 Bananada, coconut eccles, and itchy vines
 These rods, I should not be seeing
 I will not be late to school hereafter

This verse refers to all types of sticks and wines that were used by the teacher to inflict corporal punishment on students and advises students not to be late if they don't want these to be used on them. There is no discussion or remark in this poem on the suitability of using such corporal punishment on students, and one may interpret the corporal punishment here to be the student's fault. It could also be said this verse reflects the social values at the time of composing it and teachers inducing corporal punishment on students to rectify behaviour was not seen to be unprofessional back then. However, as mentioned above, this verse is often used as a cliché by the public in general use, and most such individuals who refer to this verse may not even know the origin of it. Nevertheless, this verse, which was written during the last kingdom of Sri Lanka still has 'force' on people's attitudes.

Madol Doova

The children's novel, *Madol Doova*, written by Martin Wickremasinghe - a celebrated writer in Sinhala - was first published in 1947. It was translated into English by Ashley Halpe in 1976, and this is referred to by the author here, in examining references to justifying corporal punishment on children. This story is about the escapades of a boy named 'Upali' and his friend 'Jinna'.

The story has many accounts of the mischievous acts of Upali and his friends, which become unbearable to the adults around him, especially to his father and stepmother. The book contains many references to Upali being beaten up by his father as a punishment, being described as quite normal accounts.

The first of such references can be found in Chapter II of the book. Upali, as the narrator, speaks about how his father reacted to complaints about him. The protagonist says:

Sometimes the mother of a boy whom I had hurt came home to complain about me to my father. This made my father very angry and he gave me a beating. My stepmother began to complain about me to father more and more often. I don't know whether she liked seeing me beaten. But I wasn't a boy who could be kept down by beating.¹¹⁹

Chapter 2 also contains a reference to corporal punishment by Upali's father. The protagonist narrates:

Father beat me mercilessly and locked me up for three days with one leg clamped into a pillory. This was how boys who did not regard a beating seriously were punished those days.¹²⁰

¹¹⁹ MARTIN WICKRAMASINGHE, මෙඩාල් දූව [MADOL DOOVA] (1947), *translated in* ASHLEY HALPE, MADOL DOOVA, 11 (38th ed., 2021).

¹²⁰ *Id.* at 23.

Unable to tolerate Upali's mischief, he is sent away to be boarded at Mr. Dharmasinghe, a school headmaster. Upali continues his mischief there as well, and almost gets caned by him too:

He stopped aghast, staring, holding his head with his hands.
He pulled my ears shook me violently and slapped me left and right. He let me go only to run for the cane.¹²¹

The next reference to corporal punishment, which it is justified by Upali's father could be found when he says:

You should thrash him - yes thrash well and truly! ... There's no changing him if you don't thrash him soundly!¹²²

This demonstrates the attitudes of parents towards others imposing corporal punishment on their children.

Commenting on the original text in his note to the English translation, the translator observed that 'the experiences of boyhood are enriched by the perceptions of a mature artist' in the novel.¹²³ This is an interesting observation as it could also be interpreted as a book written about the child as the protagonist but with adult thoughts all over the narrative. This could be the reason corporal punishment is 'normalized' in the book.

Similar to other texts discussed above, this could also be a reflection of the social values on treating children in 1947, which have through this novel been passed over for decades and unconsciously crept into the values of generation after generation. *Madol Doova*, similar to the other texts, is often included in school curricula.

¹²¹ *Id.* at 31.

¹²² *Id.* at 37 [emphasis added].

¹²³ *Id.* at 8.

VI. Conclusion

International law on the protection of children does not expressly prohibit corporal punishment. However, considering the effect of corporal punishment on 'inherent human dignity', an underlying principle of human rights, UN treaty bodies including the UNCRC have viewed this to be part of the obligations of States on children-related freedoms from ill-treatment or violence and rights to health and education. Based on this premise, the international community over the years have called for an absolute prohibition of corporal punishment on children over the years. However, achieving this globally is far from becoming a reality due to the widespread acceptance of the practice as a disciplinary method in different societies around the world. A complete ban on corporal punishment does not prevail in Sri Lanka as well, despite being an early signatory to the CRC. While being a dualist country that requires enabling legislation to enforce international obligations within the State, the absence of legislation to completely curb corporal violence remains a lacuna. Several reports and even case law refer to the resistance in the society based on cultural understandings and opinions to be the hindering this.

The texts examined in this paper demonstrate that society's opinion that imposing corporal punishment on students as a disciplinary method to rectify their behaviour by teachers or parents is influenced unconsciously by cliché and locutions that are passed over generations through the reference and use of such literature. These ideas and statements that even have no way of being factually tested may even supersede the accuracy of scientific evidence on the negative consequences of the practice, in the mind of an individual.
