

Prohibiting ‘Ragging’ in the Malaysian Educational Institutions: Is the Law Adequate?

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Abstract: Educational institutions are the place where knowledge and positive values are nurtured. The graduates of such institutions are expected to portray the level of maturity that they are supposed to have learnt from the educational institutions. However, in reality the student’s behaviour in the current educational institutions does not reflect the maturity and positive values that are expected from them. Reports on the increase of ‘ragging’ incidences in educational institutions served to expose the barbaric acts of the students. Therefore, the question is whether the Malaysian Criminal Law is adequate enough to curb this undesirable actions. In order to answer this question, the legal provisions under the Malaysian penal code will be looked into so as to identify the provisions in the code that are relevant to ‘ragging’. The relevant provisions will then be scrutinized to determine whether they are adequate to prohibit the act of ‘ragging’. In order to achieve these objectives, this study employs a qualitative approach. The study found that the Malaysian criminal law has provisions that are applicable to the physical forms of ‘ragging’. However, the law lacked the necessary provisions that can govern the other forms of ‘ragging’ such as psychological forms of ‘ragging’. Thus, this study suggests that an amendment to the existing criminal law or the enactment of a specific law on ‘ragging’ is vital to curb this issue.

Key words: Malaysian criminal law, educational institutions, penal code, ragging, students

INTRODUCTION

The act of ‘ragging’ in educational institutions in Malaysia is not a new phenomenon. This phenomenon has become a culture or practice conducted by the senior students against the junior students, especially the freshies (new students). The ‘ragging’ activities involve both boys and girls as the perpetrators and victims. The act of ‘ragging’ involves not only physical abuse but also mental, emotional and sexual abuse (Garg, 2009).

The issue of ‘ragging’ is not only a domestic issue, but also an international phenomenon (Garg, 2009). It is a problem faced by many countries such as the US, Canada, Japan, Australia and Great Britain. India is also facing the same problem of ‘ragging’ in its educational institutions. In fact many cases have been reported in India in respect of ‘ragging’ particularly those involving death. Between 2000 and 2007 alone, there are approximately 31 deaths reported in the Indian media (Society Against Violence in Education. Meanwhile, according to Nailul Mona and Irwansyah, the number of ‘bullying case’s in Indonesia is relatively high, especially among students (Mona and Irwansyah, 2016). In Malaysia, the issue of ‘bullying’ or

‘raggingg’ among the students become a very crucial issue discussed by all level of society. In fact, there are many cases being reported in the mass media.

It is pertinent to note that generally, there are 2 terms that can be used interchangeably in this context, i.e., ‘ragging’ and ‘bullying’. Although, there are some scholars that argued that the 2 terms are not synonymous, but for the purpose of this discussion these 2 terms will be used interchangeably to refer to the same meaning.

LEGAL DEFINITION OF RAGGING

There is no universally accepted definition of ‘ragging’. ‘Ragging’ is defined differently according to the culture, belief, background of family, age, level of education, etc. As far as the Malaysian law is concern, the term ‘ragging’ is not defined either in any statute or any cases. Therefore, this study will refer to the meaning of ‘ragging’ as provided for in the Indian law for 2 reasons. Firstly, the legislations in Malaysia are actually heavily influenced by the legislation from India and secondly, the Indian law has defined ‘ragging’ comprehensively.

Being a big country, India has >20 states and some union territories. However, at present only a few states actually have laws that prohibit 'ragging' in their educational institutions. According to Section 2 of the Tamil Nadu Prohibition of Ragging Act, 1997 (Act No. 7 of 1997) 'ragging' means display of noisy, disorderly conduct doing any act which causes or is likely to cause physical or psychological harm or raise apprehension or fear or shame or embarrassment to a student in any educational institution and includes:

- Teasing, abusing or playing practical jokes on or causing hurt to such student
- Asking the student to do any act or perform something which such student will not in the ordinary course willingly do

Similar definition of 'ragging' with the abovementioned Tamil Nadu Prohibition of Ragging Act, 1997 can be seen in Section 2 of the Maharashtra Prohibition of Ragging Act, 1999 (Maharashtra Act No. XXXIII of 1999). Besides, 'ragging' has also been defined by the Andhra Pradesh Prohibition of Ragging Act, 1997 (Act No. 26 of 1997). It is clear in Section 2(e) of the said act where it states that 'ragging' means doing an act which causes or is likely to cause insult or annoyance of fear or apprehension or threat or intimidation or outrage of modesty or injury to a student.

In the state of Goa, the Goa Prohibition of Ragging Act, 2008 (Goa Act 9 of 2009) through Section 2(e) states "ragging" means any disorderly conduct whether by words spoken or written or by an act which has the effect of teasing, treating or handling with rudeness any other student indulging in rowdy or indisciplined activities which causes or is likely to cause annoyance, hardship or psychological harm or to raise fear or apprehension thereof in a fresher or a Junior student or asking the student to do any act or perform something which such student will not do in the ordinary course and which has the effect of causing or generating a sense of shame or embarrassment or adversely affect the physique or psyche of a fresher or a Junior student.

Based on the above definitions, it can be concluded that 'ragging' in accordance with the provisions of the Indian law includes physical and psychological threats that can affect a victim whether in the form of physical or emotional injuries such as shame, fear, etc.

THE NEGATIVE EFFECTS OF 'RAGGING'

The act of "ragging" in educational institutions whether at the school level or at the higher educational institutions can become an obstacle in producing quality

human capital not only in the intellectual aspect but also in terms of personality. The act of 'ragging' or bullying can be as a direct 'ragging' or indirect 'ragging' (Poorseyed *et al.*, 2016).

The impact of "ragging" to a student in most circumstances can be horrendous. Students who became victims of "ragging" suffered severe physical, mental, emotional and psychological trauma. There were also students who died due to ragging. The effect of ragging can be illustrated by the death of Mohammed Naim Mustaqim Mohamad Sobri, a 16 years old student of the Royal Military College in 2010. The death of Mohammed Naim was alleged to have links with the act of "ragging" performed by four students in the same institution. As a result, one of the students was expelled from the institution and three others were suspended from their study.

Meanwhile, in 2007 a student named Matteus Mering August from SM Teknik Bintulu, Sarawak had died due to the act of 'ragging' performed by three other students in the same school. They punched and kicked the victim, thereby causing his death. This incident was followed by another incident in Mentakab in the state of Pahang. The victim a form three student had refused to buy cigarettes for his seniors. Due to his refusal, 10 senior students had attacked him and scalded him with a hot iron. Another ragging incident occurred in a school in Sarawak whereby several students hit their younger schoolmates and then uploaded the footage of the brutal act in the Internet. Recently in 2014, Malaysia had been shocked by the incident of 'ragging' by ten senior students against seven junior students at the Universiti Putra Malaysia (UPM) in which these junior students alleged that they have been forced to strip naked and to smoke cigarettes if they do not want to be left unharmed.

Based on an study published in the International Journal of multidisciplinary educational research, there are many effects of ragging especially to freshies, namely: physical injury through beating, hitting by objects or by forcing to perform dangerous tasks; sexual abuse by forced stripping, masturbation, forced unnatural sex, etc., psychological trauma generated because of intense fear; human rights abuse; forceful initiation to alcoholism, smoking and drugs; dropping out from college; group Violence; leads to mob mentality and violent mindset and deaths (Venkateswarlu and Satyasri, 2012).

Indeed, the act of ragging gives a lot of negative effects on the victim. Victims of ragging suffered trauma until it affects their education. Unfortunately, there are some people who still believe that 'ragging' is fun without realising that it can affect the self-esteem and dignity of the victim, causing them pain and humiliation.

Thus, ragging must be stopped and this can be done effectively by way of a legal mechanism (PRSLR, 1997a, b, 1999).

PROHIBITION OF 'RAGGING' IN THE MALAYSIAN LAW

The primary legislation with regards to criminal offences in Malaysia is the penal code. The penal code contains provisions that cover all acts which can or will tantamount to criminal activities. Presently, the existing penal code does not contain any specific provisions relating to the act of 'ragging'. It only has general provisions which can be used as a basis to curb 'ragging'. For instance, if the act of 'ragging' causes death, the person who committed the ragging may be charged under Section 302 of the penal code for murder or if he or she injured anyone he or she may be charged for causing hurt or injury under penal code.

Thus, it can be said that 'ragging' is being handled through the general provisions provided for in the penal code only. These general provisions can therefore, be considered as the existing legal provisions prohibiting the act of 'ragging' in Malaysia. Due to that fact, it is found that the act of 'ragging' which can be punished by the provisions in the penal code is the physical form of 'ragging' only. The provisions do not prevent 'ragging' in the form of psychological, mental or verbal. When there is an act of 'ragging' in the form of psychological or verbal only disciplinary action can be taken against the perpetrators according to the rules of the institutions. Consequently, the question that arises is to what extent the disciplinary action taken can be a form of deterrent for 'ragging' and will that disciplinary action be adequate to compensate the injury or trauma suffered by the victim?

Until now, the act of 'ragging' in Malaysian educational institutions is being addressed through disciplinary action and by circular only. According to the Deputy Vice-Chancellor (Student Affairs and Alumni) of Universiti Putra Malaysia (UPM) Dr. Mohammad Shatar Sabran when there are complaints about 'ragging' the matter would be referred to the disciplinary committee and then the action will be taken in accordance with the procedure. The action taken will depend on the circumstances and the information obtained. Students who committed offences may be given a written warning, suspended or expelled from the university.

PROHIBITING RAGGING IN MALAYSIA (A MOVE FORWARD)

It is submitted that legal measures are important to curb the practice of 'ragging' in Malaysia as the current non-legal mechanisms, i.e., disciplinary actions, etc. are

not adequate to deter this problem. To date however, 'ragging' is only prevented through circulars and several relevant general provisions in the Malaysian penal code. Disciplinary actions can also be taken when an act of 'ragging' is reported to the authority of the relevant educational institution.

It is suggested that specific law should be enacted or the existing law, i.e., the penal code be amended in order to deter 'ragging' as well as to protect the victims or potential victims generally freshies. The legal intervention in the issue of 'ragging' is vital in order to ensure the sustainability of educational institutions in Malaysia. It is pertinent to note that practising zero tolerance to 'ragging' is essential as it affects the victims in many ways. One of the primary roles of the educational institutions is to cultivate positive values among the consumers of the service (students). The educational institutions must also provide a safe and crime-free environment to all people, especially the students. The educational institutions should instil or inculcate values among the students especially a sense of respect to others (Cerf *et al.*, 2011).

For the long term planning, specific law on the prohibition of 'ragging' should be enacted as the current position is not adequate to settle the issue of 'ragging' in the Malaysian educational institutions. That specific law should define the term 'ragging' forms of 'ragging' kind of actions or punishments against the ragers, procedures to complain about 'ragging', etc. In the meantime however, this issue can be tackled by amending the penal code to incorporate specific provision(s) on the prohibition of 'ragging' in Malaysia.

CONCLUSION

Based on the above discussion, it is crystal clear that 'ragging' does not only involve physical abuse alone but also involves abuse of emotional, mental, sexual and so on Garg (2009). In Malaysia, 'ragging' will only become an issue of law when the victims suffered physical injury or die due to the 'ragging'. If the ragging only involved mental or emotional torture, the Malaysian penal code which regulates the criminal activities does not govern the activity.

Thus, it is not an understatement to say that the Malaysian penal code is not comprehensive in governing all forms of 'ragging' in the educational institutions because there are no specific provisions in the penal code with regards to 'ragging' in the educational institutions. 'Ragging,' be it in the physical, mental or sexual form should be strictly prohibited and the students must be enlightened as to the rules and laws prohibiting ragging.

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