

The Constitutional Rights of the Child And Student Discipline: The Lost Battle for Secondary School Principals In Mauritius?

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Abstract: *This paper examines the constitutional rights of the child as per international conventions and the laws that Mauritius has passed to promote and protect the interests of the child in the society and in schools. The authority of the principals in promoting student discipline is looked into within this lens to understand their power to lead student discipline in state secondary schools. It is found that the school head has a limited authority in effectively disciplining students due to the exigencies of countries like Mauritius to respect the different conventions and the centralisation of policy making and implementation concerning student discipline. Besides, the discussion in this paper enlightens about the favour of the Ministry of Education to implement punitive disciplinary measures, which somehow contradicts its mandate to protect the Child's dignity. It is recommended that there should be a shift from the punitive discipline approach to positive discipline approach. This shift allows the principals to respect the student's constitutional rights and promote self-discipline which increases students' self-esteem.*

Keywords: *Constitutional rights, Student discipline, Punitive discipline, Positive discipline.*

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I. Introduction

Discipline is the absence of misbehaviour, and the student's responsibility to make the difference between right and wrong, and between socially acceptable and unacceptable behaviour (Belle, 2017). Student discipline is a major school problem in Mauritius and it has aggravated in the last decade. Manifestations of students' indiscipline are scribbling on the school property and the educators' cars, smoking cigarettes and gandia on the school premises, wearing improper school uniforms, not respecting the principal and the educators, bunkering classes, bullying, damaging the school property, not doing the school work, using invectives against educators and drinking alcoholic drinks.

A newspaper survey on learners' indiscipline over the last decade revealed that students in Mauritius are not disciplined for many reasons, namely the centralisation of authority, parents' irresponsibility and disengagement in the children's attitudes to learning, insufficient authority of educators to maintain discipline, a heavy time-table which is examination-oriented and content-based, an exaggerated concern for children's rights neglecting their responsibilities, educators' lack of discipline, the absence of extra-curricular activities and of a framework for counselling students, social interactions between educators, students and the principal, private tuition, the absence of communication between parents and children on school matters; the emergence of more nuclear families with working parents, the role of social media, the incapacity of the school to enforce positive discipline among students, the laissez-aller attitude of responsible authorities at school with reference to student discipline, peer group pressure, parents over pamper their children, and a lack of good adult models for students (Le DefiQuotidien 2015; Ramjanally 2015; Hilbert, 2008; Saminaden 2008; Mahadeo 2008; Quirin 2009; Panchoo, 2016). Besides, in a recent study in Mauritius, Belle (2017) found that the constitutional rights of the child have an impact on the student discipline. The over-emphasis on this leads to the disempowerment of the state secondary school principals: they manifest a lack of authority and leadership (Beebeejaun-Muslum, 2014). It is this situation that is encouraging students to manifest a lack of discipline.

The purpose of this paper is to determine the extent to which the constitutional rights of the child affect the principals' authority to discipline students in Mauritius. This discussion will allow the education stakeholders to have a deeper insight into the state of affairs of the phenomenon and reflect on the possible suggestions that they may bring forward to contain the situation and improve student discipline.

II. The constitutional rights of the child

It is noteworthy to discuss some of the important relevant cases that have given rise to the consciousness about the constitutional rights of the child.

1. The Tinker v. Des Moines Independent Community Schoolcase(1969)

John Tinker and his siblings wore black armbands to attend schools in protest against the Vietnam war and to support Robert F. Kennedy. The principals of the schools devised a policy to suspend them until they come back to school without the band. A suit was filed, and the Supreme Court found that students had the right to express themselves where their words neither disrupted nor had something to do with the school.

2. The Goss v. Lopez case (1975)

Dwight Lopez and other students were suspended for up ten days because they made much noise in the lunchroom. He claimed that the school violated his right to due process by not giving him the possibility to be heard and that he should not be suspended. The Supreme Court agreed that states could not deprive students of their rights to “life, liberty or property” without due process and that suspensions could affect their property and liberty or reputational interests (Schimmel, 2006). So, following this case, *Goss v. Lopez* (1975), students were given the right to due process and school suspension was regarded as a violation to the student’s rights to a fair hearing before being punished.

3. The Bethel v. Fraser case (1986)

Fraser, a high school student, gave a speech by using strong sexually explicit metaphors to promote the candidacy of his friend to being in office at the morning assembly. He was suspended by the school for three days. However, the Supreme Court in this case limited the scope of the ruling in the *Goss v. Lopez* case, by stating that the school may prohibit certain styles of expressions that are sexually vulgar. Though students have the right of expression, yet the Court found that when such expressions are inconsistent with the “fundamental values of the public school education”, the school may punish the disruptive student.

So, following the Student Rights Contestations period (1969-1992), students were given the basic right to freedom of speech and expression in school, the right to privacy and freedom from unreasonable searches and the right to due process (Arum, 2005). Nevertheless, with the recognition of the students’ rights, following these three main cases in the USA, the school authority to discipline students was undermined and the latter feel free to manifest disruptive behaviour as they ignore that they also have the responsibility to respect the rights of others (Charles, 2008).

Moreover, various international conventions have been written and ratified by many countries that promote the rights of the child, and that may negatively impact on student discipline. Some of them are the United Nations Convention on the Rights of the Child (1989) and the African Charter on the Rights and Welfare of the Child (1990). Mauritius has ratified them and has passed laws such as the Child Protection Act 1994 and the Ombudsperson for Children Act 2003. These conventions and acts are reviewed in this paper to highlight the extent to which the school principal’s authority has been undermined in maintaining positive student discipline.

The United Nations Convention on the Rights of the Child (1989) stipulates that:

- The government should ensure that the children’s rights are respected, protected and fulfilled (Article 4);
- Adults should respect the views of children (Article 12);
- Children have the right to get and share information as they have the right of expression (Article 13);
- Children have the right to privacy (Article 16);
- Children should be protected from all forms of violence (Article 19);
- Discipline in schools should respect the children’s dignity (Article 28);
- No one is allowed to punish children in a cruel or harmful manner (Article 37); and,
- Adults should help children learn their rights (Article 42).

The African Charter on the Rights and Welfare of the Child (1990) stipulates that:

- If children can voice their opinions, then those opinions should be heard and taken into consideration during legal and administrative proceedings (Article 4);
- Every child who is capable of communicating his or her views should be allowed to express them freely (Article 7);
- Every child has the right to freedom of thoughts, conscience and religion (Article 9);
- Children have the right to privacy (Article 10); and,
- Children should be protected from all forms of torture, inhuman or degrading treatment and especially physical or mental injury including sexual abuse (Article 16).

Based on these Conventions, the government of Mauritius has passed the Child Protection Act 1994 and the Ombudsperson for Children Act 2003 which stipulate that “the rights, needs and interests of children are given full consideration by public bodies, private authorities, individuals and associations of individuals; the rights and best interests of children are promoted; and (c) the compliance with the Convention of Rights of the Child are promoted.” Both Acts have been passed with the aim of promoting and protecting the Child’s rights.

Following these conventions and Acts, the use of corporal punishment has been banned in many countries, including Mauritius. The Education Regulations 1957 of Mauritius stipulates that “it is unlawful to inflict any form of physical or corporal punishment on any student”. In its Annual Report 2011, the Ombudsperson for Children defines corporal punishment as “any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light. Most involve hitting (smacking, slapping, spanking) children with the hand or with an implement (a whip, stick, belt, shoe, wooden spoon, etc). But, it can involve, for example, kicking, shaking or throwing children, scratching, pinching, biting, pulling hair or boxing ears, canning, forcing children to stay in an uncomfortable position, burning, scalding or forced ingestions.” It also states that all cases of corporal punishment are subject to enquiry and are dealt with under the relevant sections of the legislations.

III. The State Secondary School Principal’s Authority to Discipline Students

The principal is the empowered authority in the school as an organisation. He/she has the overall responsibility for the smooth and effective running of the school (Ministry of Education, Culture and Human Resources, 2009). In fact, the Minister of Education has the sole control of the education system and therefore of all matters regarding the schools. Education Act 1957 stipulates that “the Minister makes regulations, among others, for discipline in schools, and methods of enforcement.” In the Student Behaviour Policy document, the Ministry of Education of Mauritius enumerates the responsibilities of the principal in dealing with student discipline. These responsibilities are:

“stimulate a school-wide approach in preventing indiscipline; lead by example by being regular and punctual; work in partnership with parents to develop and support the social and emotional skills of students; promote a positive school culture; acts promptly against all forms of student indiscipline; develop a sense of belonging to the school among the students; provide support to educators in their attempt to sustain high behaviour standards; arrange in-house sharing experiences and good practices; and organise and facilitate training of staff to successfully manage challenging behaviour.” (Ministry of Education and Human Resources, Tertiary Education and Scientific Research, 2015).

However, due to the centralisation of the education system, the principal is accountable to the Minister of Education. The School Management Manual for Principals of State Secondary Schools states that “the principal is responsible for the school under his or her responsibilities but he or she has to send reports to the Zone Director who is responsible for the proper functioning of all the state secondary schools in the Zone; the Director of Zone should keep the Ministry informed of all happenings and performance of schools; and the principal will report all the matters pertaining to the decentralisation of procedures and services.” (Ministry of Education, Culture and Human Resources, 2009). He/she is accountable for the day-to-day running of the school to the higher education authorities. The Ministry of Education has proposed disciplinary measures that principals may adopt and prescribed the protocols to be followed in cases of student indiscipline in the Student Behaviour Policy document. In cases of minor offences, the proposed measures are verbal reprimand, extra work, notes to parents in the Student Journal, and issue of warning. In the case of serious offences, the principal may give afternoon and/or Saturday detentions provided the tasks given during the detention are meaningful and facilitate behaviour modification, temporary suspension not exceeding five days, expulsion from the current school and immediate transfer to another school, and permanent expulsion from school. For criminal offences, the case is reported to the police for investigation and sanctions. In accordance with the Education Regulations 1957, however, the principal cannot expel any student from the school without the authorisation of the Minister. He/she is the sole authority and has the sole power to take and make any final decision about student discipline at the school level.

However, it is obvious that the government of Mauritius and the Ministry of Education of Mauritius contradict their mandate to promote and protect the Child’s interests and constitutional rights as detention, expulsion and verbal reprimand are punitive in nature and somehow hurt his/her human dignity. So, the government has the responsibility to review its educational policies in general, and its student behaviour policy, in particular, as the laws are violating the Articles in the Conventions mentioned and discussed in this paper. One laudable manner of promoting the Child’s rights and dignity is to do a paradigm shift from the use of punitive disciplinary strategies as proposed in the policy documents of the government of Mauritius to the adoption and implementation of positive, preventive and proactive strategies. The latter have proved to be effective in the developed world as they are evidence-based.

IV. Conclusion

From the foregoing sections, it is obvious that state secondary school principals in Mauritius have a limited authority to ensure student discipline. Though they are responsible for the proper running of the school, yet their authority is constrained by the educational and legal framework of the system in particular, and of the country, in general. They have the mandate to address the student discipline problem which is aggravating in schools, but they lack the required authority and power to assume this responsibility effectively. They can only deal with the phenomenon by considering all the requirements of the Conventions and the Acts that promote the interests of the child and protect him/her in accordance with them. This paper has contributed to the understanding of the framework within which the state secondary school principals function and the barrier that the Constitutional rights of the child represent to them in preventing them to lead student discipline in an effective manner.

The higher education authorities should proceed with the decentralisation of the authority from the Minister to the school principal so that the latter may set up a comprehensive discipline management framework that would collect data about the manifestations and causes of student discipline in the particular school and devise a specific strategic disciplinary plan so that preventive and positive disciplinary measures may be taken and implemented as a whole-school system. In fact, each school has its characteristics in terms of students' family and socio-economic backgrounds as well as academic, social and behavioural competence.

This paper contributes to the debate whether school principals should continue to use reactive and punitive disciplinary strategies or proactive, preventive and positive disciplinary strategies for effective discipline management. The educational and legal framework that exists in many countries, including Mauritius, and which prevents the principal from adopting detention, suspension expulsion, corporal punishment, reprimanding, among other such punitive measures, give rise to the significance of focusing on positive discipline, which is not punishment, at all. Positive discipline is self-discipline which teaches the students qualities such as self-control, self-awareness and self-management. The school principals should teach social and emotional skills so that the students may distinguish between right and wrong, and between socially acceptable and unacceptable behaviour.

However, the principal needs to use collective and collaborative leadership, whereby he/she adopts the distributed leadership, visionary leadership, authentic leadership, learner leadership and values-based leadership (Belle, 2018). This implies that he/she needs the contribution of each and every individual in the school, from the school caretakers to the students themselves. He must function as "the conductor or principal performer in an orchestra". He/she must get away with the "hero-paradigm" of leadership and be learner-focused by using the inclusive approach to leadership.

It is, therefore, not a lost battle for the state secondary school principals in their management role of student discipline. The prevailing system as discussed in this paper prevents them from effectively achieving it, but they must get rid of the punitive disciplinary measures dictated by the Ministry of Education and adopt positive discipline to win the battle against student disruptive behaviour. Yet, the Ministry of Education, which is the policy-making and decision-taking authority, must reconceptualise student discipline in order to contribute to effective student discipline management in state secondary schools in Mauritius. Else, the student discipline situation is likely to worsen in the future and the school principal will be completely disempowered, and vice versa.

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