

# **In the US case *Ingraham v. Wright* (1977, Florida), the Supreme Court held that corporal punishment in school was not unconstitutional: A review of relevant existing laws in Mauritius to protect our children**

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**ABSTRACT:** *Our children should be valued and respected. The use of corporal punishment in the school environment falsely and perfidiously reinforces physical aggression as an acceptable and effective means of eliminating unwanted behavior in our society. This paper examines and outlines the existing laws in local context, namely the Children's Act 2020. Corporal punishment in schools is an ineffective, dangerous, and unacceptable method of discipline. Nonviolent methods of classroom control should be utilized in all our school systems. This paper points out that there is no clear evidence that such punishment leads to improved control in the classroom. Corporal punishment can even have major deleterious effects on the physical and mental health of students punished in this manner. It severely reduces and does not enhance the academic success of students who are subjected to corporal punishment in schools. It should also be noted that in extreme situation where there need to restrain a dangerous student or use physical force as a means of protecting members of the school community subject to imminent danger, this does not count as corporal punishment but rather a self defense against attack. In the US Case *Ingraham v. Wright* (Florida,1977) the supreme court said that corporal punishment was not unconstitutional and still legal in some states. In Mauritius it is illegal.*

**KEYWORDS:** *Corporal punishment, Schools, Education, laws, Case *Ingraham v. Wright* (Florida,1977).*

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Date of Submission: 10-04-2023

Date of Acceptance: 25-04-2023

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## **I. INTRODUCTION**

On January 7, 1971, suit was filed in United States District Court for the Southern District of Florida by two junior high school students, James Ingraham and Roosevelt Andrews, alleging, individually and on behalf of all Dade County students as a class, that the infliction of corporal punishment at the Charles Drew Junior High School in Dade County, Florida resulted in a deprivation of their constitutional rights. The testimony of sixteen students described rather harsh incidents of corporal punishment at Drew Junior High School. James Ingraham testified that he was forced over a table in the principal's office and received twenty blows with a paddle because he was slow to respond to a teacher's instructions. As a result, the boy lost eleven days of school and suffered from a large hematoma which required medical attention. The court held that paddling of a student in a public school was not "Cruel and Unusual Punishment" prohibited by the Eighth Amendment (*Ingraham v. Wright*, 430 U.S. 651, 97 S. Ct. 1401, 51 L. Ed. 2d 711) and that these students were not denied due process under the Fourteenth Amendment. The court supported the doctrine of "in loco parentis" (the school acting as a parent while the student is in the custody of the school) and permitted states and districts to ban or regulate the use of corporal punishment in schools. Darden (2009) states that school districts that practice corporal punishment should carefully consider their policies on this matter. He advises that they should have clear guidelines that limit corporal punishment and that school personnel should understand those guidelines.

### **Definition of Corporal Punishment**

Corporal punishment refers to intentional application of physical pain as a method of behavior change (Straus, 2007). It includes a wide variety of methods such as hitting, slapping, spanking, punching, kicking, pinching, shaking, shoving, choking, use of various objects (i.e., wooden paddles, belts, sticks, pins, or others), painful body postures (such as placing in closed spaces), use of electric shock, use of excessive exercise drills, or prevention of urine or stool elimination (Reinholz,1977; Mallot, 2000). In fact the majority of children have experienced physical punishment by the time they reach adolescence (Reinholz,1977; Mallot, 2000). Corporal punishment in schools does not refer to the occasional need of a school official to restrain a dangerous student or use physical force as a means of protecting members of the school community subject to imminent danger.

The use of corporal punishment in schools reinforces physical aggression and promotes violence in society. Teachers should be educated in the use of alternative methods of discipline, with an emphasis on employing evidence-based behavior modification and other techniques to maintain control of the classroom without resorting to violence. Children should not be subjected in the school milieu to hitting, slapping, spanking, punching, kicking, pinching, shaking, shoving, choking, use of various objects (wooden paddles, belts, sticks, pins, or others), painful body postures (as placing in closed spaces), use of electric shock, use of excessive exercise drills, or prevention of urine or stool elimination.

Advocates of corporal punishment in schools generally contend that it is an effective form of correcting child misbehavior. However, a review of the science in this area notes that the vast majority of the evidence leads to the conclusion that corporal punishment is an ineffective method of discipline and has major deleterious effects on the physical and mental health of those on whom it is inflicted (Straus, 2007; Mallot, 2000; Hyman, 1996; Lynnette, 2001; American Academy of Pediatrics, 2000; Greydanus et al, 2003).

One of the most important section is as follows ; **S34. Mandatory reporting for child in danger**

(1) Any person who performs professional or official duties with respect to children, or any other person, has reasonable grounds to believe that a child with whom he is in contact with has been, is being or is likely to be, exposed to harm, shall report the matter to the supervising officer or to the Police. (2) Any person who fails to comply with subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years. (3) In this section – “professional or official duties” means duties performed by – (a) health care professionals, including medical practitioners, nurses, psychologists, dentists, pharmacists, occupational therapists and administrators of hospital facilities; (b) employees of child care institutions, educational institutions, reform institutions or places of safety; (c) social workers, family counsellors, psychotherapists, probation officers and guardians ad litem; or (d) any other person who, by virtue of his employment, profession or occupation, has a responsibility to discharge a duty of care and support towards a child.

## **II. LITERATURE REVIEW**

The Children's Act 2020, Act 13 of 2020, part III Offences against Children Sub-Part A – Offences, listed the offences of the act as follows Section 11) Discrimination against child, 12) Marriage of, or cohabitation with, child 13) Ill-treatment of child 14) Corporal or humiliating punishment on child 15) Abandonment of child 16) Abduction of child by parent 17) Abduction of child by other person 18) Removal of child from place of safety 19) Causing, inciting or allowing child under 16 to be sexually abused 20) Child prostitution and access to brothel 21) Child pornography 22) Child grooming 23) Sale of alcohol to child 24) Allowing child to have access to gaming house 25) Mendicity 26) Bullying 27) Right to privacy 28) Causing or inciting child to do unlawful act.

**S11 Discrimination against child** (The Children's Act ,2020)

(1) No person shall discriminate against a child on the ground of the child's, or the child's parent's, race, caste, place of origin, political opinion, colour, creed, sex, language, religion, property or disability. (2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.

**S12 Marriage of, or cohabitation with, child**

(1) No person shall – (a) marry a child civilly or religiously; or (b) cause or force a child to marry civilly or religiously. (2) No person shall – (a) live together with a child, under the same roof, either as spouses or unmarried partners; or (b) cause or force a child to live together with another person, under the same roof, either as spouses or unmarried partners. (3) It shall not be a defence to any person that a child has given its consent to be married or to live together under subsection (1) or (2), as the case may be. (4) Any person who contravenes subsection (1) or (2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 10 years.

**S13 Ill-treatment of child**

(1) No person shall ill-treat a child, or allow a child to be ill-treated, so that the child suffers, or is likely to suffer, harm. (2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.

**S14 Corporal or humiliating punishment on child**

(1) No person shall inflict corporal or humiliating punishment on a child as a measure to correct or discipline the child. (2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years. (3) In this section – “corporal or humiliating punishment” means any form of punishment which causes pain or suffering to a child through, but not limited to, the use of force or use of substances.

### **S15 Abandonment of child**

(1) (a) No person shall, for pecuniary gain or other gain, or by gifts, promises, threats or abuse of authority, incite a parent to abandon his child or to abandon his child to be born. (b) Any person who contravenes paragraph (a) shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 20 years.

(2) (a) No person shall, for pecuniary or other gain, act as an intermediary between a parent willing to abandon his child or willing to abandon his child to be born and another person wishing to adopt that child. (b) Any person who contravenes paragraph (a) shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 30 years. (3) (a) No person shall abandon, or by threat or abuse of authority incite another person to abandon, a child in a secluded place. (b) Any person who contravenes paragraph (a) shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 10 years. (4) (a) No person shall expose or abandon a child in a spot which is secluded. (b) Any person who contravenes paragraph (a) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years. (5) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under this section.

### **S16 Abduction of child by parent**

(1) No parent of a child or person with whom a child is to be domiciled pursuant to an order of the Court shall, without the written consent of the other parent of the child – (a) take away or remove the child from Mauritius; (b) decoy or entice the child to leave Mauritius; (c) cause the child to be taken away or removed from Mauritius; or (d) retain the child in Mauritius. (2) No person shall fail to deliver or present a child in breach of an order of a Court. (3) Any person who contravenes subsection (1) or (2) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.

### **S17 Abduction of child by other person**

(1) No person shall, by force, fraud or without the written consent of the parent of a child – (a) take away the child or cause the child to be taken away; or (b) decoy, entice or cause the child to be decoyed or enticed out of the keeping of its parent or from any place where the child is or has been placed. (2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 20 years. (3) Where a person abducts a child in the manner specified in subsection (1) without force or fraud, but without the written consent of the parent of the child, that person shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 10 years.

### **S18 Removal of child from place of safety**

(1) Where a child is in a place of safety, no person shall, without lawful authority or reasonable excuse – (a) take the child, or keep the child away, from that place of safety; or (b) do any act for the purpose of enabling the child to stay, or run away from that place of safety. (2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.

### **S19 Causing, inciting or allowing child under 16 to be sexually abused**

(1) No person shall – (a) sexually abuse a child under the age of 16; or (b) cause, incite or allow a child under the age of 16 to be sexually abused by another person. (2) For the purpose of subsection (1), a child under the age of 16 shall be deemed to be sexually abused where the child has taken part whether as a willing, or an unwilling, participant or observer in any act which is sexual in nature – (a) for any gratification; (b) in any activity of pornographic, obscene or indecent nature; or (c) for any other kind of exploitation. (3) Any person who commits an offence under subsection (1) shall, on conviction, be liable – (a) where the child is physically or mentally handicapped, to penal servitude for a term not exceeding 30 years; (b) in any other case, to a fine not exceeding one million rupees and to penal servitude for a term not exceeding 20 years. (4) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under this section.

### **S20 Child prostitution and access to brothel**

(1) No person shall – (a) offer, obtain, procure or provide a child for prostitution; (b) cause, coerce or force a child to participate in prostitution; (c) profit from, or otherwise exploit, a child's participation in prostitution; or (d) have recourse to child prostitution. (2) No person shall cause, incite or allow a child to have access to a brothel. (3) Any person who commits an offence under subsection (1) or (2) shall, on conviction, be liable – (a) where the child is physically or mentally handicapped, to penal servitude for a term not exceeding 20 years; or (b) in any other case, to penal servitude for a term not exceeding 10 years. (4) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under this section. (5) In this section – “child prostitution” includes the use of a child in sexual activities for any form of consideration.

### **S21 Child pornography**

(1) No person shall – (a) knowingly obtain access, through information and communication technologies, to child pornography; (b) produce, possess, procure, obtain, import, export or distribute child pornography, whether or not

through information and communication technologies, for himself or for another person; (c) view, supply, disseminate, offer or make available child pornography and any other pornographic material; or (d) coerce, force or otherwise induce a child to view a pornographic performance or pornographic material, or to witness a sexual act. (2) Any person who commits an offence under subsection (1) shall, on conviction, be liable – (a) where the child is physically or mentally handicapped, to penal servitude for a term not exceeding 20 years; (b) in any other case, to penal servitude for a term not exceeding 10 years. (3) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under this section. (4) In this section –“child pornography” includes any representation by whatever means – (a) where a child is, or appears to be, engaged in real or simulated explicit sexual activities; or (b) of the sexual parts of a child, primarily for sexual purposes.

#### **S22 Child grooming**

(1) Any person who – (a) having met or communicated with a child on one earlier occasion – (i) intentionally meets the child; (ii) travels, in any part of the world, with the intention of meeting the child in any part of the world; or (iii) makes arrangements, in any part of the world, with the intention of meeting the child to travel in any part of the world; and (b) at the time he does so, intends to engage in an unlawful sexual activity with the child or in the presence of the child during or after the meeting, shall commit an offence.

(2) Any person who commits an offence under subsection (1) shall, on conviction, be liable – (a) where the child is physically or mentally handicapped, to penal servitude for a term not exceeding 20 years; (b) in any other case, to penal servitude for a term not exceeding 10 years. (3) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under this section. (4) It shall not be a defence to any prosecution under subsection (1) that the person charged had reasonable grounds to believe that the child was above 16.

#### **S23 Sale of alcohol to child**

(1) No person shall – (a) sell alcohol or any other compounded spirit to a child; or (b) cause or allow a child to consume alcohol or any other compounded spirit. (2) Any person who commits an offence under subsection (1) shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years. (3) It shall be not a defence to any prosecution under subsection (1) that the offence was committed without the knowledge or consent of the person charged and that the person took all necessary steps to prevent the commission of the offence.

#### **S24 Allowing child to have access to gaming house**

(1) No person shall cause or allow a child to have access to a gaming house. (2) Any person who commits an offence under subsection (1) shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years. (3) It shall not be a defence to any prosecution under subsection (1) that the offence was committed without the knowledge or consent of the person charged and that the person took all necessary steps to prevent the commission of the offence. (4) In this section –“gaming house” has the same meaning as in the Gambling Regulatory Authority Act.

#### **S25 Mendicity**

(1) No person shall cause or allow a child under his care to beg. (2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding 200,000 rupees and to imprisonment for a term not exceeding 5 years.

#### **S26 Bullying**

(1) No person shall bully a child. (2) Any person who contravenes subsection (1) shall commit an offence and shall, on conviction, be liable to a fine not exceeding one million rupees and to imprisonment for a term not exceeding 10 years. (3) In this section –“bully” means any behaviour by whatever means, including information and communication technologies, which – (a) is repetitive, persistent and intentionally harmful; or (b) involves an imbalance of power between the victimiser and the child and causes feelings of distress, fear, loneliness or lack of confidence in the child, and which results in serious physical or psychological harm to the child, disability of the child or death of the child.

#### **S27 Right to privacy**

(1) No person shall do an act which affects the privacy of a child. (2) Notwithstanding any other enactment and subject to subsection (3), no person shall, in relation to a child witness, child victim or child offender, publish or broadcast in the media any information in any form, including a photograph, a picture, a video recording or an audio recording, which identifies or tends to identify, the child. (3) A Court may, in order to protect the privacy of a child, order that the child be referred to by his initials or a pseudonym in any part of any legal proceedings which is made public. (4) Notwithstanding any other enactment, no person shall, in relation to a child witness, child victim or child offender who has passed away, publish or broadcast in the media any information in any form, including a photograph, a picture, a video recording or an audio recording, which identifies, or tends to identify, the child, unless expressly authorised by – (a) the parent of the child, where no Court proceedings have



been instituted; or (b) any Court, where the matter is pending before a Court. (5) This section shall not apply in a case where a child has been declared missing by the Police publishing, disseminating or otherwise sharing personally identifying information or visual depiction of the child that may be of legitimate use in locating the child. (6) In this section –“media” – (a) means any print, broadcast or online media, regardless of whether or not these are incorporated or otherwise legally registered; and (b) includes online periodicals, television and radio broadcasts, blogs and other social media unless restricted to members only.

### **S28 Causing or inciting child to do unlawful act**

Any person who causes or incites a child to do an unlawful act shall commit an offence and shall, on conviction, be liable to the sentence provided for that unlawful act.

## **III. DISCUSSION**

There is no clear evidence that punishment leads to better control in the classroom (Gershoff & Bitensky, 2008; Moelis, 1988; Frazier, 1990; Goss v. Lopez, 1975; Lynnette, 2001; American Academy of Pediatrics, 2000; Dubanoski et al, 1983). Physically punishing children has never been shown to enhance moral character development, increase the student’s respect for teachers or other authority figures in general, or offer greater security for the teacher (Gershoff & Bitensky, 2008; Hyman et al, 1977; Office for Civil Rights, 2006; Lynnette, 2001; Greydanus et al, 2003). Children who are subjected to corporal punishment in school are being physically, emotionally, and mentally abused. No evidence shows that students subjected to corporal punishment in schools develop enhanced social or self-control skills (Gershoff & Bitensky, 2008; Hyman, 1985, 1998; Greydanus et al, 2003). Children and adolescents can be physically damaged by such punishment. In the case of corporal punishment in schools, many students are hurt. Medical complications may prevent students from returning to school for days, weeks, or even longer. Reported medical findings include abrasions, severe muscle injury, extensive hematomas, whiplash damage, life-threatening, hemorrhage, and can lead to death (Office for Civil Rights, 2006; Poole et al, 1991; Center for Effective Discipline, 2008; Greydanus et al, 2003).

## **IV. FINDINGS**

Hyman *et. al.* (1977, 1998) and Greydanus et al, (2003) argued that nearly half of students who are subjected to severe punishment develop an illness called Educationally Induced Post-Traumatic Stress Disorder (EIPSD). In this disorder, there is symptomatology analogous to the Post-Traumatic Stress Disorder (PTSD). As with PTSD, EIPSD can be identified by a varying combination of symptoms characteristic of depression and anxiety. This mental health imbalance is induced by significant stress; with EIPSD the stress is the inflicted punishment. Such victimized students can have difficulty sleeping, fatigue, feelings of sadness and worthlessness, suicidal thoughts, anxiety episodes, increased anger with feelings of resentment and outbursts of aggression, deteriorating peer relationships, difficulty with concentration, lowered school achievement, antisocial behavior, intense dislike of authority, somatic complaints, tendency for school avoidance, school drop-out, and other evidence of negative high risk adolescent behavior (Dubanoski et al, 1983; Reinholz, 1977). This does not predict nor encourage academic success in our school milieu. Punished children become more rebellious and are more likely to demonstrate vindictive behavior, seeking retribution against school officials and others in society (Poole et al, 1991).

## **V. CONCLUSION**

The use of corporal punishment is associated with increased mental health problems in children including increased psychological distress, which may lead to anxiety, depression, alcohol and drug use, and general psychological maladjustment in those to whom it is applied (Gershoff & Bitensky, 2008). Also, in addition to personal distress, it may lead to vicarious learning of maladaptive methods of problem resolution by those students who witness it. It encourages children to resort to violence because they see their authority figures using it. Such practices harm children in teaching them that violence is acceptable, especially against the weak, the defenseless, and the subordinate; this is a message that can be reasonably assumed will negatively affect generations yet unborn. Violence is not acceptable and we must not support it and this can be done by sanctioning its use by those who practice it (Gershoff & Bitensky, 2008; Lynnette, 2001).

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Yudhistir S.M.F. Jugessur. "In the US case *Ingraham v. Wright* (1977, Florida), the Supreme Court held that corporal punishment in school was not unconstitutional: A review of relevant existing laws in Mauritius to protect our children". *International Journal of Humanities and Social Science Invention (IJHSSI)*, vol. 12, no. 4, 2023, pp. 112-117. Journal DOI- 10.35629/7722