

**The use of corporal punishment in Sri Lanka: *Hewa Maddumage Karunpala and others Vs Jayantha Prema Kumara Sriwardhana and others* (SC/FR/97/2017) (Supreme Court of Sri Lanka)**

**Miurin Kanijude Amarnath**

**Abstract:**

Corporal punishment is widely used in schools around the world, although laws prohibit the use of physical punishment on children. In Sri Lanka, the student is punished physically in the name of discipline, although it is an offence under the national law of Sri Lanka and international conventions that are ratified by Sri Lanka. This case emphasizes a higher degree of protection for children when they have been subjected to physical harm. The national laws have been developed based on this case.

**Keywords:** Violation, rights, punishment, torture, degrading treatment

The Third Petitioner (hereinafter referred to as Petitioner or Child Petitioner) in this case was a 15-year-old student at Pahuwalla Central College in Sri Lanka when the petition was filed. His parents were the First and Second Petitioners, respectively. The First Respondent was the sectional head, the teacher in charge of discipline, and the art teacher at Puhulwella College. The Second Respondent was the principal of that School. The Third, Fourth and Fifth Respondents were in positions of overall direction and supervision of that school while the 4A Respondent and 5A Respondent were serving as office-bearers of the specified position.

The Petitioner went to school as usual on February 13, 2017 where he was assigned to one of three groups in the class during the first two periods of the day designated for agriculture. Students were instructed to cultivate vegetables by ploughing a certain place in the schoolyard. The Petitioner had been fatigued while performing this activity and had taken a short break by sitting on a portion of a wall next to the plant nursery before resuming the designated task. Two students came up to the Petitioner and informed him that he was requested to visit the First Respondent's office,

while he was cleaning his hands and tools. The first respondent asked him where he was sitting at the time and slapped the third Petitioner in his face. The petitioner had been in extreme pain, discomfort, and disorientation. However, after the event, the First Respondent dragged the Petitioner from the classroom.

The Petitioner had been then in his class and had continued to experience severe pain. When the First respondent was informed of this, he told the child petitioner not to consider it seriously and to ignore it. The Petitioner then told his class teacher about the incident and his condition. She did not allow him to go home. However, she instructed the Petitioner to tell the incident to his parent. Further, the 1st Respondent later returned to the Petitioner's classroom together with a teacher, who talked to the Petitioner and requested the Petitioner to tell him if it bled. This incident was not raised with the school principal by any staff member of that school and the Petitioner received no medical assistance from any staff members. The Petitioner had purchased two Panadol as painkillers from the canteen within the school.

When the petitioner got home from school, he told his grandmother that his ear hurt, and that the 1st Respondent had slapped him. After that, the child petitioner's ear was examined at the Kirinda-Puhulwella Rural Hospital where the doctor noted that there was eardrum damage and that it would be necessary for the petitioner to be transferred Matara General Hospital. He was admitted to Matara General Hospital, and on February 14, 2017, the Petitioner was moved to Karapitiya Teaching Hospital for additional research. A police statement was taken before the petitioner was discharged. No proper medical report was given by the hospital. The Third Petitioner continued to have extreme pain after arriving home because there had been no conclusive treatment.

Being dissatisfied with the treatment provided at the prior hospitals, the first and second Petitioners took the Third Petitioner to Colombo National Hospital on February 15th, 2017. The third Petitioner was hospitalized overnight for observation and investigation. According to a medical assessment from the Colombo National Hospital, the Child Petitioner had a perforated ear drum and was experiencing "conductive hearing loss" in his left ear, which affected his ability to hear low frequencies. As the Child Petitioner had no prior record of hearing problems prior to this incident, the Petitioners believed that the First Respondent's assault on the Child Petitioner was the direct cause of this. Subsequently, a case was filed before the Supreme Court of Sri Lanka under Article 126 of the Constitution of the Democratic Socialist Republic of Sri Lanka, 1978 on March 7, 2017, against the first through sixth respondents, alleging that the respondents had violated the Third Petitioner's fundamental rights, which are protected by Article 11[7] of the Constitution. The

question was whether the Respondent and state violated the human rights of the Child Petitioner enshrined in Article 11 of the Constitution of the Democratic Socialist Republic of Sri Lanka, 1978.

**Held, unanimously upholding the claim,** that the 1st Respondent and the State had violated the fundamental rights of the Third petitioner, which are guaranteed by Article 11 of the Constitution. The court ordered compensation of one hundred and fifty thousand rupees from the 1st Respondent to the Child Petitioner as well as an additional sum of five hundred thousand rupees from the State to be paid to the Child Petitioner after carefully considering all the facts and relevant matters, particularly permanent lifelong damage to the Child Petitioner's hearing ability.

## **Commentary**

In this case, the petitioners contended that the First Respondent's act amounted to torture, cruel, inhumane treatment, or punishment, all of which are against Article 11 of the Constitution of the Democratic Republic of Sri Lanka 1978. According to Article 11: "No person shall be subjected to torture or cruel, inhuman or degrading treatment or punishment."

Further, the Petitioners stated that when the issue was brought up with the school administration, they showed no interest in this matter. In this case, the Petitioners argued that hitting the Child Petitioner in the face, injuring his left eardrum, and withholding or failing to seek medical assistance constituted torture and/or cruel, inhuman, or humiliating treatment or punishment and the Petitioners asked for redress under Article 17 which states regarding remedy for the infringement of fundamental rights by executive action, because the alleged breach was committed by an administrator acting in his official role.

On the other hand, the First Respondent provided a narrative in which he calmly stated that there might be other places the child petitioner could sit down if he felt tired instead of on top of the abandoned wall. He also added that only a disorderly or "rowdy" person would act in such a manner. After warning the Child Petitioner, he only tapped the Child Petitioner's shoulder and demanded to change this behaviour in the future (at [10]).

According to the First Respondent's affidavit, the child petitioner neglected to immediately notify the principal and the medical centre about his purported concerns and only did so several hours after returning home. However, he did not attach any document for supporting his statement.

The Third Respondent, The Zonal Director of Education of the Zonal Education Office in Hakmana also provided a report (report 3R1) on the preliminary investigation conducted under his supervision and submitting it alongside his affidavit.

According to paragraph 5 of this report, the 1st Respondent hit the Child Petitioner, even though he didn't mean to hurt her or have any malice against her. It also concludes that by engaging in such conduct, the First Respondent violated Circular No. 14/2016, which was issued by the Secretary of the Ministry of Education on April 29, 2016. Under paragraph 6, the First Respondent would also be removed from the school's Disciplinary Board and advised to 1st respondent never in future to engage in such behaviour as assaulting a student.

The official report expressly stated that the 1st Respondent had assaulted the Child Petitioner. However, the 1st Respondent then strongly disputed this in his affidavit and claimed that as a result, the Petitioner's case about his acts was *mala fide* and illegal. While answering the question of whether the Respondent of this case violated the fundamental right of the child petitioner, Justice S. Thuraiaraja cited internal legislation circulars and Cases as well as international conventions and general comments. Further, he illustrated an Indian case as well for supporting his decision.

Justice S. Thuraiaraja pointed to Article 37 of the Convention on the Rights of the Child at the outset, which highlights the responsibility of nations to protect children from torture and other kinds of cruel, inhumane, or degrading treatment or punishment. Further, the court quoted all significant international declarations which held similar terms, such Article 5 of the Universal Declaration of Human Rights, Article 7 of the International Covenant on Civil and Political Rights and Article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The court also quoted Paragraph 11 of General Comment No.8 (2006) which is issued by the Committee on the Rights of the Child in its 42nd Session and highlighted the following sentence from the paragraph:

Any punishment in which physical force is used and intended to cause some degree of pain or discomfort, however light..... In the view of the Committee, Corporal Punishment is invariably degrading....

Justice S. Thuraauraja opined that it is essential to establish from an early age a positive attitude toward a society without violence. Further, causing mental or physical harm is not an option for maintaining discipline. He stated that:

An individual's understanding of discipline, respect for rules, and a healthy attitude towards a non-violent society are integral attributes that must be instilled from a young age. However, in civilized society, these goals are to be accomplished using alternative forms of discipline which do not inflict physical or mental harm. Sri Lanka as a signatory to the UNCRC has understood the need to curb the widespread use and acceptance of Corporal Punishment. (at [13-14])

The Court referred to the beginnings of corporal punishment and said:

...our culture was such that it had a negative view on Corporal Punishment. Corporal Punishment was a prevalent method of punishment used during the colonial era of occupation brought into practice from public school practices from [their] respective countries, thereby trickling into the attitudes and daily practices of citizens of the country...It is indeed an outdated and disproven practice from the western world that we are dearly holding on to (at [18]).

Further, the Judge brought to light the illustration of section 341 of Penal Code (Ordinance No.02 of 1883) which expressly states that when 'a person intentionally uses force on any person without the consent of the other person' he would be committing an offence if he used such force 'knowing it to be likely that by the use of such force he will illegally cause injury, fear, or annoyance to the person to whom the force is used', however, when 'a schoolmaster, in the reasonable exercise of his discretion as master flogs... one of his scholars. [He] does not use criminal force... because... although... [he] intends to cause fear and annoyance... he does not use force illegally' (at [14]). Even though section 308 Penal Code (Amendment) Act, No.22 of 1995 which states that Anyone with the custody of a child who deliberately hurts, harasses, ignores, or abandons such person has committed a crime of child cruelty. It also includes planning or arranging for an individual to be physically abused, ignored, or left in a manner that will probably result in his suffering or physical harm, the above said illustration remains as unchanged.

Even though *Bandara v. Wickremasinghe* (1995) 2 SLR 167 involved a case before the Penal Code's amendments making corporal punishment illegal or accepting mental trauma, the Supreme Court supported the idea that excessive use of force by administrators and teachers to maintain discipline could constitute cruel and degrading treatment.

In that case, K.M.M.B. Kulatunga PC J., joined by Chief Justice G.P.S. de Silva and Pathmanathan Ramanathan J., set out that the disciplining of students is within the authority of school staff. They could be held accountable for the violation of FR by taking executive or administrative action if they overstepped their authority while doing so because:

... [D]iscipline of students is a matter within the purview of schoolteachers. It would follow that whenever they purport to maintain discipline, they act under the colour of office. If in doing so, they exceed their power, they may become liable for the infringement of FR by executive or administrative action (at [172]).

He further stated that:

This Court must by granting appropriate relief reassure the petitioner that the humiliation inflicted on him has been removed, and his dignity is restored. That would in some way guarantee his future mental health, which is vital to his advancement in life (at [174]).

However, in the present case, Thurairaja PC J inclined to accept this view and stated that the developments in society require that the viewpoint be basically held and expanded upon. According to him, the Court, as the child's upper guardian, must make sure that the child receives a sense of justice being served in light of the teacher's violation of his or her person and disregard for their dignity. Thurairaja PC J. emphasised a higher degree of protection for children stating as follows:

It is unacceptable to consider that a child assaulted may not be entitled to a remedy for the reason of being a minor while an adult in the same circumstances would be entitled to such relief. In any case, minors, as vulnerable and impressionable members of society must be entitled to a higher degree of protection (at [22]).

Citing *Wijesinghe Chulangani vs Waruni Bogahawatte* SC FR App No. 677/2012, Thurairaja PC J suggested that for the child's healthy development and the recognition of this fundamental dignity of himself and others, it is essential that they be informed that the child's dignity is protected by law and is therefore represented by the Court's order. Thurairaja PC J also referred to the Indian case of *Parents Forum for Meaningful Education v. Union of India and Another* (2001) DLT 705, where the UNCRC, and the Delhi High Court determined that corporal punishment must be outlawed, made

significant observations, such as that the FR of the child will be meaningless if they are not protected by the State and that the children's right to be protected against violence of any type associated with education must be recognized by the State and schools.

It was further said that allowing even minor acts of violence against children could spiral out of control since a teacher using a rod can't always be watching how hard he's hitting the kid. In addition, all constitutional rights are guaranteed to children, and these rights cannot be taken away from a child just because of his or her age because being young does not diminish a person's worth in comparison to an adult (at [23]).

Finally, Thuraij PC stated that a child is an invaluable national resource that should be nurtured and attended to with tenderness and care rather than with cruelty and that using corporal punishment on children to correct them cannot be considered education because it causes the children irreparable harm to their bodies and minds. Further, it is stated in the judgment that no malice or intent is necessary for the breach of Article 11 to occur (at [23-24]).

It is clear in the circulars issued by the Education Ministry, specifically in paragraph 2.4 of circular 12/2016, that even when acting in the student's best interests and maintaining school discipline, a teacher may still be in violation of all applicable laws regarding corporal punishment. Because it is the responsibility of the State to preserve children from all types of physical violence, the motive of the perpetrator—whether they are a teacher, father, guardian, or any other adult does not matter when corporal punishment occurs.

Section 4 of Circular No. 12/2016 forbids corporal punishment in state schools and specifies positive disciplinary techniques that teachers may employ; However, this might not be applicable to all schools and is not a legal requirement. National activists claim that the Supreme Court's decision does not forbid physical punishment in schools and that legislative reform is unlikely to be implemented as a result. The government has made a public commitment to changing the law to outlaw corporal punishment in all circumstances. .In reporting to the Committee on the Rights of the Child in 2017, The government admitted that it was aware of the legislative gap and stated that "introducing a law to combat corporal punishment" was an important issue (<https://endcorporalpunishment.org/human-rights-law/national-high-level-court-judgments/sri-lanka-2021-supreme-court-judgment> - accessed 30 November, 2022).

It is submitted that this case highlights several crucial aspects that the prior case ignored. When considering a case involving a child, the court should function as the child's upper guardian

and offer a higher level of protection than an adult and for this reason the decision should be welcomed in Sri Lanka.