

CORPORAL PUNISHMENT BY PARENTS / CAREGIVERS NOW ILLEGAL

Category: Commercial Law, Dispute Resolution
written by Diana Schwarz | November 9, 2017



The recent decision by the South African courts on 19 October 2017, has stirred a big public reaction.

The South Gauteng High Court ruled that the common law defence of reasonable chastisement available to parents/caregivers, in defending themselves for the corporal punishment of their children, is unconstitutional and no longer applies.

Corporal punishment in schools was abolished by the South African Schools Act, 1996. However twenty one years on, we are still seeing incidents of corporal punishment taking place at South African schools.

There are numerous instances where caregivers which include nannies and day care facilities, have been found to be physically abusing children and labelling it reasonable chastisement.

Save the Children South Africa states that *"The International Stolen Childhood Index Report shows that roughly 50,000 children in South Africa are victims of violent crime every year."*

The "Optimus Study: Sexual Victimization of Children in South Africa" conducted in 2016, found that one in every three young South Africans have experienced some form of sexual abuse in their lives.

The high level of child abuse and violence against children in South Africa has greatly influenced the court's decision.

Whilst most parents are outraged by the ruling and the invasive reach of the courts into their homes, many child rights activists welcome the decision.

It is a near impossible task to be able to regulate corporal punishment in the home, a blanket exclusion has now become applicable.

Physically disciplining or hitting a child, even one's own child is a crime of assault, however in the past, a parent if charged, could raise the special defence of reasonable chastisement and possibly be found not guilty. It is this special defence of reasonable chastisement that has been found to be

unconstitutional.

There are certain social behaviour concerns, raised by parents that children will now become undisciplined and this will impact society as a whole. Whilst this may be true and the bible's direction in Proverbs 13 v24 "*Whoever spares the rod hates their children, but the one who loves their children is careful to discipline them*" is often quoted as "*spare the rod and spoil the child*", there are other non-violent ways parents can use to discipline their children.

The aim of the decision is not to charge parents with a crime but to protect South African children as a whole and to encourage more positive non-violent forms of discipline.