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Implementation of School Uniform Policy and the Violation of Students' Human Rights in Schools

Abstract

The paper highlights the violations of students' human rights in schools. The problem is the incident that took place at a school in Pretoria in 2016 where Black girls protested against the School's Code of Conduct relating to hairstyle. Qualitative approach was used to collect information through a literature review and desk-top research methods. Black girls claimed they were discriminated against and the protest serves as an example to demonstrate students' human rights violations when schools implement school uniform policies. Inequality in schools is rife in South Africa. School uniform policies with regard to dress codes are expected to reduce school violence, prevent discipline issues, and improve in school safety. Students have rights and their rights can include issues regarding cultural, economic, and political freedoms. Students, especially adolescents, respond very negatively to school uniforms.

Keywords: wrongful discrimination, waiver and consent, school uniform, coercion, equality principle, violation, human rights, substantive equality

Introduction

The interpretations of the implementation of school uniform policies and the violation of students' human rights in schools are not neutral but very much embedded in cultural and political assumptions. The grand narrative of human rights contains a subtext which depicts an epochal contest pitting savages, on the one hand, against victims and saviours, on the other (Zembylas, Charalambous, Charalambous & Lesta, 2016). Appearance concerns are an increasing issue among adolescents (Cribb & Haase, 2016). Schools are able to regulate students' behaviour with the aim of maintaining discipline. Advocates of school uniform suggest that uniforms can minimise dress-related problems, such as promoting an effective climate for teaching and learning, creating prospects for self-expression, increasing school safety and security, promoting school unity and pride (Yang, 2017). This paper presents an argument from an opposing view that school uniform policies can violate students' human rights in schools. While both sides of the argument have pros and cons, the prime reason for schools to use school uniforms is to lessen and improve students' behaviours. The fairness issue has been obscured by the tendency of scholars and courts to frame the conflict exclusively in terms of schools' autonomy interests against the child's best interests, and that courts have almost uniformly focused on schools' autonomy. Both have substantially undervalued a shared, societal interest in the integrity and fairness of the criminal justice process (Sabelli & Leyton, 2001).

Joldersma (2016) is of the view that vulnerable individuals in our society are often harmed because of membership of a vulnerable group. These factors reveal

that being wronged is regularly associated to membership of groups that collectively are on the social periphery, marginalized by social attitudes, legislated laws, institutional policy, and informal social practices. Wrongful discrimination refers to unjustified distinctions between persons. The fact that complaints of discrimination generally point to the differential treatment shows that discrimination is a comparative wrong (Hellman, 2016).

Method

A qualitative approach was used in exploring the implementation of school uniform policy and the violation of students' human rights in schools. Data were collected by means of a literature review and desk-top research.

Equality principles

The equality right principle of 'treat me the same unless there is a good reason for different treatment' was violated in the case of Pretoria School for Girls (Simons, 1985, p. 391). Equality principles are the most obvious example of a constitutional constraint in which the status of the school benefits as a 'gratuity' seems largely irrelevant (Simons, 1985). Even if a school is distributing a 'gratuitous' benefit, such as an education benefit, it must distribute the benefit 'equally' in the relevant sense; it cannot distribute the benefit only to white students, or to an irrationally chosen subgroup (Simons, 1989). Some constitutional and legal rights are concerned with comparative injustice and others with non-comparative injustice. Hellman's claim in Simon's (2016) article that the wrong of discrimination can be explicated either as comparative or non-comparative can be deemed controversial. By definition, wrongful discrimination refers to unjustified distinctions between persons. The independent [non-comparative] conception of discrimination makes the term 'discrimination' lose its moral resonance (Simon, 2016).

In some American schools students with disabilities are over 50% more probable to experience school corporal punishment than their peers without disabilities in 67% of school districts in Alabama, 44% in Arkansas, 34% in Georgia, 35% in Louisiana, 46% in Mississippi, and 36% in Tennessee (Gershoff & Font, 2016). In a report from Human Rights Watch and the American Civil Liberties Union (ACLU) (2009) found that administrators sometimes administer punishment to children with disabilities for behaviours that stem from their disability, such as those endemic to autism, Tourette's syndrome, or obsessive compulsive disorder (Gershoff & Font, 2016). This argument helps the researcher to recognize that there are different ways in which one can understand the distinction between a comparative and a non-comparative approach to justice. There are (at least) three different ways one might characterize the distinction between comparative and non-comparative justice claims. The names used are pseudonyms to refer to hypothetical students called 'Peter and John' to illustrate a point below.

First, people might be pointing to the structure of the complaint of the person alleging discrimination. Does the complainant, let's call him 'Peter', say: "I got raw deal when 'John' (someone else) got a better deal; that's not fair" (the comparative complaint)? Or does the complainant say: "I got a raw deal when I should have received a better deal; that's not right" (the non-comparative complaint).

Second, the distinction between comparative and non-comparative claims may mean what we might call the normative grounding of the claim. In other words, how do we assess 'Peter's' treatment? Must we look to see how other people are treated in order to determine if 'Peter' received the treatment he deserves? If discrimination is a comparative injustice, then schools should be in a position to determine if students' human rights are violated by comparing the treatment of all students, for example, 'Peter's' treatment (receiving of a raw deal) when compared (with the treatment accorded to John's treatment (receiving 'a better deal')). In contrast, if discrimination is a non-comparative injustice, schools should look at the treatment accorded to 'Peter's' violation of human rights in the form of a 'raw deal' and assess if this is the correct way to treat students, for example, 'Peter' in this case (without comparing that treatment to the treatment accorded to any real or hypothetical other person). If the permissibility of 'Peter's' treatment depends on the comparison with the treatment accorded (or that would be accorded) to 'John', then the claim is one of comparative justice (Hellman, 2016, pp. 114-115).

Substantive equality

This principle means that non-elective characteristics, such as sex and race, should not affect the way people are treated by those in authority.

Differential treatment of subordinated social categories of students can be regarded as substantive equality when it benefits them on four interrelated dimensions: redistribution, recognition, transformation and participation. Redistribution is primarily concerned with resources and benefits, including representation in the school, and access to dispute resolution procedures. Recognition refers to the elimination of status-based stereotyping, humiliation and violence. Transformation aims to remove historically biased institutions that turn differences into a detriment. As for participation, it relates to the inclusiveness of political and other spheres of decision-making where minorities have traditionally been absent in the school's structures (Dupont, 2016, pp. 292-293).

Some research has shown that having uniform dress codes can reduce school violence, discipline issues, and improve school safety and climate (Dulin, 2016). Originally school uniforms were introduced to hide the social differences between students. Using standard uniforms can also save money that is needed to buy extra clothes as fashion to impress other people at school. Uniforms can reduce the conspicuous advantages of rich people, who can afford costly items, which show how much more wealth they have than other people. There are several types of economic bullying which can be lessened by the use of school uniform. Many schools across South Africa also provide the choice between a summer and winter uniform, with khaki uniforms and brown shoes being very common in the summer in some schools. South African law has not required gender neutrality in school dress codes and a distinction between girls' and boys' uniforms remains. School corporal punishment is currently legal in 19 American states, and over 160,000 children in these states are subject to corporal punishment in schools each year (Gershoff & Font, 2016).

Inequality of participation in schools because of uniform costs means that the benefits of education are disproportionately enjoyed by children of comparatively wealthier families far more likely to complete secondary school or to enroll in

higher education while poor families may not be able to afford to financially support their children through school, hence the tendency for higher dropout rates in this group (Wambugu & Mokoena, 2016).

The decisions School Governing Bodies make about gender enrollment and school uniform policy affect how parents and students perceive the school (DiMartino & Jessen, 2016).

Some educators at Pretoria High School for Girls are of the view that there was no racial discrimination in relation to the enforcement of the Code of Conduct in relation to hairstyles; nevertheless, there was a need for greater clarity and understanding on the part of certain White educators. It was indicated in the report by the majority of Black students interviewed, that Blacks' hair does not grow downward like Whites' hair, and that it grows up, and it was difficult to create rules to regulate it. In support of the above viewpoint, some educators at the school confirmed that the issue of hair was a very sensitive issue at the school (Harris, Nupen & Molebatsi, 2016).

According to Moser (2016) in Indonesia because of uniform rules some students arrived at school wearing a batik shirt, their most formal school uniform worn on national holidays. Others wore their regular formal uniform used for the Monday flag ceremonies. Some wore their school tracksuits, prepared for Senam Pagi Indonesia, the Friday morning calisthenics. Others were dressed in their Saturday uniforms of traditional Malay wear, also a symbol of Muslim faith. These students realised that they are all wearing different uniforms and asked teachers as they arrived in the school yard what the proper uniform was for that day. Teachers were unsure and waited until the principal arrived, who announced that during the month of Ramadan it was compulsory for all students to wear traditional Malay costumes. Many students went home to change, and one boy wearing a tracksuit lived too far away from the school and could not go home. He sat on the ground in the corner of the yard humiliated and crying while he was teased by other students for being bodoh (stupid, ignorant) for wearing the wrong uniform. These cases of uniform in South Africa, Indonesia and Thailand are illustrating the extent of the violation of students' human rights in schools.

In Thailand student uniforms at both school and university levels were regulated nationally from 1939 under the ultra-nationalist Prime Minister Field Marshal Po. Phibunsongkram via the Student Uniform Act (Royal Gazette, 1939) and again in 2008 via another such Act signed by outgoing Prime Minister General Surayut Chulananon, which repealed the earlier Act. School uniforms are worn to reflect the Thai identity in schools (Draper, 2016). Therefore, wearing "ethnic" school uniforms featuring school colours is common in primary and secondary schools in the North of Thailand schools.

Waiver and consent

Do unconstitutional conditions cases necessarily involve waiver of a right or consent to its infringement? If students are aware of the conditions and 'choose' the benefit anyway, do they have no cause to complain? 'Waiver' and 'consent' are malleable and controversial concepts. They are not sufficient grounds for precluding every unconstitutional conditions claim. Often students are not fully aware of the conditions; often they have a constricted practical choice; sometimes it is simply

unfair for the schools to put certain kinds of choices to students; and some constitutional rights are entirely unwaivable or inalienable (Simons, 1989).

Consent or assumption of risk situation

A student has three choices to make in a school:

- (1) Not engaging in an activity (and also obtaining certain benefits);
- (2) Engaging in the activity and encountering a tortuously created risk and also attaining certain benefits; or
- (3) Engaging in the activity and not encountering that risk and also attaining certain benefits (Simons, 1987).

Consent, in the sense of full preference, is the most viable concept underlying assumption of risk and intentional tort consent doctrine. But the term consent can be misleading here. Sometimes a plaintiff may agree not to hold a defendant liable for conduct that would otherwise be tortious. Such waivers will often be enforced, especially when they are in contractual form. However neither consent to an intentional tort nor assumption of the risk of negligent and other tortious behavior usually reflects this form of agreement – even if ‘agreement’ encompasses implicit agreements or unilateral expressions of intent (Simons, 1987, p. 224). Students for being in schools do not mean that they have consented to the violation of their human rights.

Coercion

The concept of coercion is sometimes used loosely in this area, but it is usually inapposite. Under a strict definition of ‘coercion’, a school ‘coerces’ a student only if, among other things, the school intends that the student should not exercise a right, and she in fact does not exercise the right (Simons, 1989). In the case of Pretoria School for Girls, for example, the school did not really ‘coerce’ Black students. Teachers violated the students’ convictions about their human rights, since there was no reason for them to believe that the motivation given in the uniform policy requiring compliance was indeed a violation of students’ rights.

In America Black students are at a much greater risk of being subject to corporal punishment than White students in those states where it is being used. Black children in Alabama and Mississippi are at least 51% more likely to be corporally punished than White children in over half of school districts, while in one fifth of both states’ districts, Black children are over 5 times (500%) more likely to be corporally punished (Gershoff & Font, 2016). According to Gershoff & Font (2016, p. 8), ‘Black children receive all forms of school discipline at a higher rate than their White peers and they are disciplined more severely than their non-Black peers for the same misbehaviours’. The disciplining of learners in a discriminatory manner amounts to discrimination and these is a violation of students’ human rights. Subjecting students to coercion will destroy their development in mental capacities. It can eliminate options available to students. It is true that autonomy does not require the maximization of the number of options, but only an adequate range of valuable options – neither any option in particular nor a maximal quantity. Thus the coercive reduction of options undermines the students’ human rights. Students’ rights will always be violated by subjecting them to coercive policies (Abizadeh,

2008). In terms of section 36 (1) of the Constitution of the Republic of South Africa, rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, such as – the nature of the right; the importance the importance of the purpose of the limitation; the nature and extent of the limitation; the relation between the limitation and its purpose; and less restrictive means to achieve the purpose (Republic of South Africa, 1996).

Conclusion

The paper argues that schools that exploit vulnerable students in causing harm or wrong to them can justifiably be considered violating their human rights. Schools are expected to engage in human rights praxis with the understanding that students have human rights irrespective of race, origin, color, disability, sex, pregnancy, and language. Dominant discourses of group supremacy should be avoided in schools. One of the main challenges facing teachers in implementing school policies is the difficulty in understanding where the issue of human rights starts and where it ends.

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