



UUM JOURNAL OF LEGAL STUDIES

<http://e-journal.uum.edu.my/index.php/uumjls>

How to cite this article:

Khan, N. J. M., Ghazali, F., & Shukor, S. F. A. (2021). Compulsory vaccination for children: Violation of human rights? *UUM Journal of Legal Studies*, 12(2), 115-140. <https://doi.org/10.32890/uumjls2021.12.2.6>

COMPULSORY VACCINATION FOR CHILDREN: VIOLATION OF HUMAN RIGHTS?

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Received: 9/9/2020 Revised: 5/1/2021 Accepted: 25/1/2021 Published: 5/7/2021

ABSTRACT

Immunisation protection includes vaccination programme that is very crucial to prevent the spread of disease among children or those with low immune systems. However, the cases of contagious diseases such as measles have increased dramatically in many countries around the world, including Malaysia. This may be partly due to the rise of certain groups or movements that do not believe in the efficacy of the vaccines. This paper outlined the scenario and existing framework on the administration of the vaccines in Malaysia, with respect to the practices of some countries namely the United State, Italy and

Singapore on the implementation of the immunisation programme to its community. Subsequently, this paper highlighted the issues on compulsory vaccination on whether it violated the fundamental liberties incorporated in the Federal Constitution. The researchers adopted a doctrinal approach, whereby materials were compiled from the Malaysian and other jurisdictions' legislations, case laws, journal articles, and databases. This paper is intended for policymakers as well as the public to understand the possibility for implementing compulsory vaccinations from a legal perspective.

Keywords: Immunisation programme, compulsory vaccine, fundamental human rights, herd immunity.

INTRODUCTION

In early 2019, Malaysia was shocked by the sudden deaths of 15 indigenous people from the Batik tribe in Kampung Kuala Koh, Gua Musang, Kelantan (Abdullah, 2019). Based on the laboratory results, the deaths were caused by a measles outbreak. The Minister of Health believed that the contributing factor to the spread of measles in this indigenous community was due to the low coverage of measles immunization (Annuar, 2019). In 2018, a 14-month girl who received no vaccines, had died of diphtheria (Isa, 2018). In February 2019, a two-month-old infant died from severe diphtheria infection and organ failure as she had not received any immunisation. The infection was caused by *corynebacterium diphtheriae*, which produces symptoms such as sore throat, tonsil swelling and blood infections, followed by more severe complications such as endocarditis and organ failure, and subsequently death (Annuar, 2019). In 2018, the number of measles cases increased to 1,958, compared to 1,709 cases in 2017 (Bernama, 2018). It was also reported that there was a sudden increase of Pertussis (whooping cough) cases in 2018, which had caused a total of 22 deaths. Due to the increased transmission of infectious diseases and deaths that involved young children, suggestions and recommendations have been proposed for compulsory vaccination to be a requirement for each student when registering for schools. However, the Ministry of Education has explicitly declared that no compulsory vaccination requirement would be imposed on students to go to school, as the ministry believes that the idea contradicts the

right to education, as provided under the law (Sarabatin, 2019). If the right to education is violated, the students may not be able to receive basic education, and eventually the parents will become increasingly ignorant of the educational approach on vaccines.

Vaccines have made a significant impact on the quality of life and life expectancy by improving the immunity of communities and the global health system as a whole. The vaccine was first invented in the eighth century to address the smallpox outbreak and later in the ninth century; vaccinology was extended to eradicate rabies, typhoid, cholera and plague. Furthermore, scientific research and discoveries through the aid of recent technological advances have benefited immunology and vaccinology developments. More vaccines have been made available to prevent rotavirus, Japanese encephalitis, pneumococcal conjugates, human papillomavirus recombinant, zoster, meningococcal conjugates and pneumococcal conjugates (Plotkin, 2014). The World Health Organization (WHO) defined vaccine as:

“A biological preparation that improves immunity to a particular disease. A vaccine typically contains an agent that resembles a disease-causing microorganism and is often made from weakened or killed forms of the microbe, its toxins or one of its surface proteins. The agent stimulates the body’s immune system to recognize the agent as foreign, destroy it, and “remember” it so that the immune system can more easily recognize and destroy any of these microorganisms that it later encounters.”

With vaccines, there has been a significant improvement to the global health of the society at all levels. Vaccination is also the most effective health intervention which have reduced the numbers of deaths over the years. Moreover, it is proven to be cost-effective, as compared to the cost of healthcare (Ozawa et al., 2016). Despite the success of vaccination in preventing contagious disease and supporting the longevity of life, there is a rise of certain movements that propagates the paradox of vaccination. Therefore, immunisation programmes around the world have been hindered due to the increasing opposition and skepticism by people who believe that vaccination is a failure. For instance, there are arguments that suggest that there is a significant

link between vaccination and autism (Goin-Kotcel et al., 2020). News and information that have been shared in various social media platforms have led to the widespread disbelief in vaccination and its role to prevent the transmission of diseases. On the other hand, there are groups that are ‘pro-vaccines’, and have strongly urged the government to impose compulsory vaccination to children before admission into schools. Through a doctrinal approach, this paper examined the practice of compulsory vaccination programme in other countries, and reviewed the implementation of this requirement with respect to any violation of human rights. This study adopted an in-depth analysis of the legal doctrine, which included legal principles, law cases and legislation that are related to compulsory vaccination and fundamental human rights from the constitutional point of view.

IMMUNISATION PROGRAMME IN MALAYSIA

As discussed earlier, vaccines are used to ensure better global health. It was estimated that more than one million children around the world died due to limited access to conventional vaccines (Mantovani & Santoni, 2018). In Malaysia, vaccination is implemented through the National Immunisation Program (NIP), which was introduced in the 1950s. The vaccination is free for all Malaysian children in the government facilities. Vaccines for Diphtheria, Pertussis, and Tetanus (DPT) were introduced in the 1960s. The programme was followed by BCG vaccine (Bacille Calmette-Guerin) to prevent tuberculosis in 1961, and the OPV vaccine (Oral Polio Vaccine) in 1972, to prevent polio. In 1984, immunisation through the measles vaccine was introduced, followed by the rubella vaccine in 1988. The hepatitis B vaccine was then implemented in the following year at 1989. The DPT immunisation was then combined with the Hib vaccine in 2002, whereby this vaccine prevented the spread of haemophilus influenza type B. Next, additional vaccines for mumps were also incorporated in the MMR vaccine (measles, mumps, and rubella) in 2002 (Kusnin, 2017).

As recommended by the Ministry of Health, the immunisation process was to start on the first visit, whereby the infant is below the age of two months old, and parents must adhere to the immunisation schedule that has been provided by the ministry. This programme includes

immunisation against tuberculosis, diphtheria, tetanus, and acellular pertussis, haemophilus influenza type B, measles, mumps and rubella. In addition, the vaccine against Japanese Encephalitis has also been provided in Sarawak, while the vaccine for Human Papillomavirus (HPV) is provided only for girls at the age of 13 (Yeong, 2015). Apart from the vaccines provided under the NIP, several suggested immunisation schedule that are available in private health facilities are presented in Table 1.

Table 1

Suggested Immunisation Schedule for Vaccines Not Listed in the National Immunisation Programme (NIP)

Vaccine	Age/ Duration of Vaccination
Pneumococcal (conjugate vaccine)	Recommended to complete three doses within the first year of life starting at six weeks of age. Consult your doctor for the individual recommended schedule according to the age of the child receiving the first dose.
Meningococcal	Recommended for children travelling to a high-risk area. A single dose provides immunity for up to 3 years.
Rotavirus	Recommended that the first dose be given after six weeks of age. Consult your doctor for the subsequent doses and intervals according to the manufacturer's recommendation.
Varicella/chickenpox	For children of 12 months to 12 years: Single-dose, For children above 12 years: 2 doses more than four weeks apart.
Hepatitis A	For children above one year: 2 doses given 6-12 months apart.

Through the implementation of the NIP, the immunisation coverage was nationwide and aided in disease control. However, there has been an increasing number of opposition on vaccines since 2012. Some of the main reasons for this is due to religious beliefs, doubts on the vaccine contents and inclination towards homoeopathy practices. The consequences of the drop in vaccines administration had resulted in the increased outbreaks of vaccine-preventable diseases (Kusnin, 2017). In 2016, 1600 cases of refusal of vaccines were recorded in all states in Malaysia, whereby Perak (286) recorded the highest number, followed by Terengganu (233) and Pahang (178), despite only 637 similar cases were reported in 2013 (Kusnin, 2017). The

National Immunisation Promotion Campaign (2016 – 2020) was launched by the Ministry of Health to address the issue of vaccine refusal. Through its initiative, the government had aimed to elucidate rumours and allegations on vaccine safety, to promote pro-vaccination movements, as well as to educate parents and to strengthen beliefs in accepting recommended vaccines. Findings from NHMS 2016: Maternal & Child Health Population Survey indicated that only 1.37 percent of respondents doubted the halal status of the vaccines, while 0.93 percent of respondents had refused the vaccines on grounds of religion (Kusnin, 2017). Table 2 highlights the fatwas that have been issued by muftis from several states on the necessity of vaccines.

Table 2

Fatwas on the Need for Vaccination

States	Fatwa (Ruling)
Mufti of Perak, Tan Sri. Dr Harussani Zakaria	It is compulsory (<i>wajib</i>) to vaccinate the children in order to strengthen the child's immunity and to avoid transmission of infectious diseases. Those who reject immunization are guilty of violating the order (<i>syarak</i>).
Mufti of Kelantan, Datuk Mohamad Shukri	It is compulsory (<i>wajib</i>) to vaccinate the children if such a situation poses an emergency. In such cases, the situation is less serious or harmless; parents are recommended to vaccinate their children (<i>Harus</i>).
Mufti of Terengganu, Datuk Dr. Zulkifli Muda	The scheduled vaccine injection on children is a must (<i>harus</i>) and obligatory (<i>wajib</i>) to prevent illnesses that could lead to death.
Mufti of Perlis, Dato' Dr. Mohd Asri Zainul Abidin	Parents are obliged (<i>wajib</i>) to vaccinate the children to protect the child from epidemic attacks. Negligence in upholding this responsibility that causes harm to the child is sinful.
Mufti of Federal Territory, Kuala Lumpur	The scheduled vaccines are mandatory (<i>wajib</i>) for the children. Parents who neglect this obligation are considered to have sinned if their children were infected with the infectious disease that could have been avoided.

The aforementioned table highlights that the injection of vaccines are mandatory from a religious perspective to ensure that the health of the children from any infectious diseases is protected. The Fatwas

issued by the muftis were in line with the Islamic teaching, and the parents who refused the vaccines injection are deemed to cause harm and have committed a sinful action. The main concern on the refusal of vaccines among Muslim parents is due to the halal status of vaccines, while non-Muslims parents are more concerned on the safety of vaccines (Yvonne et al., 2020). The parents are more worried on the prohibited (*haram*) substances and active components used in vaccines, and how these substances could affect the child's immune systems (Yvonne et al., 2020). Therefore, the government should take reasonable steps to promote the benefits of vaccines injection towards children's life and health in the long term. There should be more educational approaches that should be conducted in hospitals, clinics, schools, and through other modes of communication such as social and mass media. Therefore, it is vital for the governing authority to amend the policy to ensure that vaccination programmes are made compulsory to students before their enrollment into school, and to take legal action against those who refuse vaccination (Nasa, 2017).

COMPULSORY VACCINATION IN OTHER JURISDICTION

It is undeniable that some vaccines do have certain side effects on a small number of humans. For instance, the existence of mercury in vaccines had led to autism spectrum disorder (Wakefield et al., 1998; Kirby, 2005). Goin-Kotcel et al. (2020) revealed that parents' hesitancy over children's immunisation was induced by the belief that vaccines would be a cause to autism disorder. However, studies have shown that there is no concrete evidence that links vaccinations with the development of autism or autism spectrum disorder (Taylor et al., 2002; Newschaffer et al., 2002; Taylor et al., 2014). Nevertheless, Karimi et al. (2017) stated that autism pathogenesis can be caused by genetic and environmental factors, including the parental age. It is proposed that older parents may be a contributing factor to the development of autism in children (Shelton et al., 2010; Parner et al., 2012).

Since vaccines were introduced, various infectious diseases have reduced significantly. The general health of the public has been proven to have significantly improved. According to the WHO, vaccine

injections are among the most cost-effective methods to prevent the spread of infectious diseases and to reduce the death rates caused by these diseases. More than one million deaths could be avoided if global awareness for vaccination injection increases. Furthermore, vaccination as a mandatory obligation under the law can be an effective public health measure that could aid in controlling the spread of diseases, as well as to achieve herd immunity. This proposition has attracted continuous debates and opposition, particularly in relation to the constitutional rights (Colgrove & Lowin, 2016). Furthermore, Trentini et al. (2019) emphasised the importance of an effective immunisation programme that would subsequently mitigate the negative perceptions of vaccination, as well as to promote resilient herd immunity.

Coercion or compulsion, including imposing the positive obligation on the part of the society or limiting the freedom to promote and preserve public health values, have been accustomed by the public for decades (Flanigan, 2014). In some countries, vaccines are compulsory for children, and they will not be permitted to go to school if they do not get the required vaccine injections. Some developed countries have established vaccination programmes for children, such as the United States, Italy, and Singapore; and have had a positive impact on declining vaccination coverage, as well as reducing the spread of diseases. Moreover, penalty has been imposed for those who refuse to be vaccinated, and this has increased the percentage of vaccinations among the public (Rezza, 2019; Trentini et al., 2019)

In addition, Trentini et al. (2019) further elaborated on the significance of compulsory vaccination for school enrolment in the effort to support stable herd immunity and reduce the spread of diseases such as measles, as implemented in Singapore. The country was able to achieve high coverage of immunization levels among children. The Singaporean government has introduced the National Childhood Immunisation Programme (NCIP) that includes immunisation against tuberculosis, hepatitis B, diphtheria, pertussis, tetanus, poliomyelitis, measles, mumps and rubella. Furthermore, the Singaporean government had imposed compulsory immunisation for Diphtheria and Measles. The schools are required to monitor and ensure that each student presents their immunisation certificates upon enrollment into schools, and to follow all the recommended immunization procedures

(Health Promotion Board, 2016). The NCIP has been successfully implemented as evidenced by the declining disease incidences, excellent immunisation coverage rate and high level of herd immunity of the childhood population. The high level of herd immunity of the childhood population is induced by the successful implementation of the immunisation programme, which is responsible in controlling the spread of diseases from outside the country. Apart from that, an effective monitoring system for immigrants and non-residents in schools and workplaces, including international students, was established to maintain the level of herd immunity (Liew et al., 2010).

Furthermore, compulsory school vaccines have been the foundation of disease control and monitoring system in the United States for more than a decade; and with plenty of amendments, the United States had introduced the Vaccines Act 2019. These laws have sparked debates between the government and the parents' rights to vaccinate the children. Although some states' laws compel vaccination that enabled children to attend schools, the existence of some exclusion clauses allowed parents to register their children into schools without being vaccinated based on medical and non-medical reasons (Colgrove & Lowin, 2016). Furthermore, the Centers for Disease Control and Prevention was established to support the measles eradication campaign. The agency proposed to the states for the need of students to be vaccinated as part of the mandatory school enrolment requirements (Colgrove & Lowin, 2016). Although there were exceptions for compulsory vaccination for children, the Courts, in two landmark cases, refused to allow hesitancy for vaccination due to religious basis as in the case of *Prince v. Massachusetts* 321 U.S. 158 (1944) and the case of *Brown v. Stone* 378 So. 2d 218 (1979). In these two cases, the courts ruled that the freedom to practice religion does not overrule the right of the community to be protected from hazardous exposure of contagious diseases. The court in *Brown v. Stone* 378 So. 2d 218 (1979) believed that the minority parents who failed to vaccinate their children on grounds of religion, had violated the right of the majority of children whose parents embraced different values.

Other than the United States and Singapore, Italy has strictly implemented the compulsory vaccination of children before enrolling into schools, whereby parents will be fined up to €500 for failure in complying to such rules. These compulsory vaccines were inclusive of

immunisation against chickenpox, polio, measles, mumps and rubella. In fact, the country had promulgated extensive national policies to promote herd immunisation to improve the quality of life through the Italian National Health Plan 1996-1998, Italian National Plan for Vaccines 1999-2000, and New Italian National Plan for Vaccines 2005-2007. In addition, the government has introduced the Italian National Plans namely, Vaccine Prevention 2012-2014 and 2017-2019 to combat measles, mumps, rubella, pertussis, Haemophilus influenza type B, meningococcus B and C, pneumococcus, varicella, HPV and rotavirus. Italy had first initiated compulsory vaccination by law since the 1930s, including to children, as tabled by various Italian laws such as Italian Law no. 891/1939, no 292/1963, no. 51/1966 and no 165/1991 (Crenna et al., 2018).

Moreover, the Courts also played an imperative role in the enforcement of vaccination policies, especially with regards to reconciling the autonomy of individuals and some of the general interests of the protection of the epidemic. The Court upheld the power to impose mandatory immunisation and ruled that the victims could claim compensation from the community. The decision compelled the mass public to vaccinate to ensure that the spread of infectious pathogens in the community can be prevented (Tucak, 2017). For instance, some states (in United States) may have quarantined infected people to prevent the spread of diseases (Flanigan, 2014). Nevertheless, the quarantine procedures are not as cost-effective as compared to vaccinations (Tucak, 2017).

FUNDAMENTAL LIBERTIES IN THE FEDERAL CONSTITUTION

The Federal Constitution is the supreme law of the Federation which governs the concept of sovereignty and the constitutional principles of sovereign states. As the highest law of the land, Article 4(1) construes that the document is superior to its concept of sovereignty. Fundamental liberties are among the important components of this Constitution and is listed in Part II of the Malaysian Constitution, which contain nine clauses. Among them are personal liberty (Article 5), Prohibition of bondage and forced labor (Article 6), protection against retrospective criminal laws and repeated trials (Article 7), equality (Article 8), prohibition of expulsion and freedom of movement

(Article 9), freedom of speech, assembly and association (Article 10), freedom of religion (Article 11), right to education (Article 12) and rights to property (Article 13). However, in the past, it was contended that combating subversion and promoting racial harmony was more crucial than the emphasis on human rights, when the constitution was being drafted (Faruqi, 2008).

In principle, as the highest law of the land, the Federal Constitution is the main reference for human rights protection in Malaysia. Malaysia has adopted several international agreements that relate to these fundamental liberties, such as the Universal Declaration of Human Rights (UNDHR), the Anti-Discrimination Convention on Education, and the Convention on the Rights of the Child and the Elimination of Discrimination against Women (CEDAW). Nevertheless, in many constitutional issues raised in the court, the court is more likely to refer to the constitution, rather than any other international conventions. As quoted by Lord Jennings; “*Conventions are the flesh which clothe the dry bone of the law*”. Therefore, conventions are merely political practices, and are not enforced by the courts (Faruqi, 2008). There are limited judicial relief or sanctions for any violation of the conventions, as in the case of *Government of Kelantan v Government of Federation of Malaya* (163) MLJ 355. With many issues surrounding the legitimacy of international law and conventions, Kumm (2004) stated that “*The constitutionalist model is committed not to an international constitutional law but to constitutionalism beyond the state*”.

Nevertheless, the principle of liberty and justice is the foundation of this nation. Apart from the Federal Constitution, there are a few legislations that have been passed in Malaysia to protect human rights, including the Criminal Procedure Code, the Evidence Act and the Courts of Judicature Act (Faruqi, 2008). To promote awareness and educate the public of their human rights in Malaysia, the Human Rights Commission (SUHAKAM) was established in 2000, under the Human Rights Commission of Malaysia Act 1999 (Act 597). Apart from being active in the United Nations Commission on Human Rights (UNCHR), this agency aims to enlighten and protect the human rights of the Malaysian public.

When discussing the issue regarding compulsory vaccination to children before enrolment into schools, the following aspects need to be considered; firstly, whether the government is able to impose

compulsory vaccination against their will. The second issue is whether unvaccinated children should be treated differently, and should their privileges be deprived because of their parents' failure to provide immunisation for their children. Lastly, whether it is appropriate to deny the right to schooling and access to education to unvaccinated children. This approach contradicts the national law and policy on education, whereby primary school education is deemed compulsory, and that the Education Act 1996 does not discriminate children's right to education on any grounds (Imam Supaat, 2014). Therefore, the issue surrounding compulsory vaccinations are in fact related to personal liberty, equality and the right to education. In the past, the government has announced its intentions to study the possibility of compelling children to be vaccinated before attending schools. The Deputy Prime Minister believed that through this approach, the level of immunisation could reach 95 percent, compared to 88 percent in 2017 (Berita Harian Online, 2019).

Article 5 of the Federal Constitution indicates that no person shall be deprived of his liberty, except by law. This provision is specifically for a person who has been arrested to uphold his rights following his detention such as the right to counsel, right to be brought before a magistrate within twenty-four hours and that person shall not be further detained in custody without the permission of the magistrate. This provision was incorporated within the Constitution to protect a person's liberty from any interference. According to Faruqi (2008), the concept of life and personal liberty in Article 5 does not limit the right to travel and freedom from false imprisonment, however, it includes a broader aspect of life such as living with dignity and necessity. The court in *Olga Tellis v. Bombay AIR 1986 SC 180* and *Lembaga Tata tertib Perkhidmatan Awam v. Utra Badi [2000] 3 MLJ 281* held that deprivation of livelihood is equivalent to the deprivation of life. In the case of *Tan Teck Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor [1998] 3 MLJ 289*, the Court of Appeal opined that: “.... the expression “life” appearing in Article 5 does not refer to mere existence. It incorporates all those facets that are an integral part of life itself and those matters, which go to form the quality of life”. In this case, Gopal Sri Ram held that judges as interpreters need to adopt a liberal approach when interpreting the true intention of the framers of the Federal Constitution. He stated that in order to achieve that, the expression of ‘life’ in Article 5(1) should be given a broad and liberal meaning.

Parents who refuse to vaccinate their children may contend the intention of the government on their attempts for compulsory vaccination for children. If vaccinations were to be made a requirement to children before enrolling to school, this measure essentially violates their rights under Article 5 of the Federal Constitution. As in the case of *Francis Carolie v Union territory of Delhi* 1981 AIR 746, 1981 SCR (2) 516, the meaning of life included the right to life with dignity and includes all that goes within it. In the case of *Tan Tek Seng v Suruhanjaya Perkhidmatan Pelajaran* [1996] 1 MLJ 261, ‘life’ is inclusive of any limbs of life which cannot be deprived from any person. Thus, parents may contend that Article 5 protects their rights to refuse vaccinating their children and preserves the parents’ freedom on the choices to raise their children.

However, they should know that vaccine refusal could lead to outbreaks. For instance, the disease outbreaks in Malaysia between the year 2015 and 2019 were caused by the refusal of parents to vaccinate their children (Qamruddin, et al., 2020). For example, the outbreak in Disneyland, Orange County, California in December 2014 was due to a weakened herd immunity. Article 5 could be interpreted in different ways to preserve the parents’ freedom on their choices to raise their children. Therefore, it is important to ensure that the right to life and access to a quality life should include the protection of health, as in *Bandhua Mukti Morcha v. Union of India & Ors.* (1997) 10 SCC 549.

Nevertheless, all general rules come with exceptions. The interpretation of Article 5 also includes some limitations. With references to Article 5, the liberty of parents need to be balanced with the right of the children to be protected from vaccine-preventable diseases. Children who are denied vaccination are at a higher risk of contracting vaccine-preventable diseases, and as such, would suffer severe complications if they were to contract the diseases. Indeed, the children are dependent on others to take care of them (Reiss & Weithorn, 2016). Therefore, their parents or guardians should act on their best interests in all aspects, including their health. Every child deserves to grow up healthily and to be protected from preventable diseases. The parents should know that they are risking their children to preventable diseases, over the small risk posed by vaccination. Thus, the parents should put the liberty of children as their priority and to protect them from the spread of the diseases.

Bradford and Mandich (2015) suggested that stricter policies on immunisation had a significant effect in reducing vaccine exemptions. Therefore, strict policies should be implemented. However, in the United States, the vaccination exemption rates have increased significantly, suggesting that the public perception towards vaccines have changed. The general public have now started to doubt the safety measures of the vaccines (Bradford & Mandich, 2015). Compulsory vaccination policies involve the balancing of constitutional rights and the rights of the state authority to regulate conduct (Reiss & Weithorn, 2016). In the case of *Jacobson v Massachusetts* 197 U.S. 11 (1905), the Court held that the liberty of an adult citizen could be restricted by the authority, in a way that he can be compelled to vaccinate in order to prevent the spread of a life-threatening contagious disease. The Court further elaborated that personal liberties can be restricted when protecting general welfare because all members of society owe a duty to one another, and that no one can endanger the general welfare.

The Malaysian Child Act 2001 highlights that “a child is not only a crucial component of such a society but also the key to its survival, development and prosperity”. Section 31(4) Chapter III of the Child Act 2001 specifically protects children from the neglect of necessary medical treatment. Section 31(4) of the Child Act 2001 states that, “*A parent or guardian or other person legally liable to maintain a child shall be deemed to have neglected him in a manner likely to cause him physical or emotional injury, if being able to so provide from his own resources, or if he fails to provide adequate food, clothing, medical or dental treatment, lodging or care for the child.*” By virtue of Section 31(1) of the same Act, parents who are deemed to have neglected their children upon conviction are subjected to a fine not exceeding twenty thousand Ringgit Malaysia or imprisonment not exceeding ten years, or both. The incorporation of these provisions indicates that parents do not have absolute authority when raising their children. Any action or decision taken must include some degree of consideration for the best interests of their children, subjected by the Child Act 2001. Parents who refuse to vaccinate their children are considered to not act in the best interest of their children as they are risking their children’s life to the contraction of vaccine-preventable diseases that could be life-threatening. This paper highlights that the refusal to vaccinate children against vaccine-preventable diseases falls under the

definition of ‘neglecting children from getting the necessary medical treatment’ and that the parents must be held responsible, subjected to the Child Act 2001. In the case of *Prince v Massachusetts*, 321 U.S. 158, 166 (1944), the Court held that the state must step in to promote the children’s best interests when the parents did not adequately protect their children’s welfare. The Court further emphasised that the parents could not claim freedom from compulsory vaccination for their children based on grounds of their religious beliefs, as the right to practice religion freely does not include the liberty to expose the community or the child to a transmutable disease that may lead to death. Therefore, the authors agree that although parents indeed have substantial discretion on the ways to raise their children, including making health care decisions, this notion must be seen in the presumption that parents act in their children’s best interest. Hence, when parents make a decision such as to not vaccinate their children against vaccine-preventable diseases, this is indeed against the best interest of their children as this action could compromise their children’s health. In the case of *Newmark v Williams*, 588 A2d 1108 (Del. 1991), the Court held that parents have an obligation to provide their children with adequate medical care. The study conducted by Brennan et al. (2000) proposed the immunisation requirement before enrollment into school, as children in a school environment are always in close contact, and therefore, communicable diseases could be transmitted easily. Outbreaks in schools could endanger the health of the school children, whereby this is preventable from the early stage. Therefore, it is appropriate to restrict parental freedom with respect to this notion, as an unvaccinated child could put others in danger (Calandrillo, 2003). Hence, compulsory vaccination for children before attending school would not violate any constitutional rights as this requirement is aimed at protecting the children’s welfare and community from vaccine-preventable diseases.

Article 8 of the Constitution states that all persons are equal before the law and are entitled to the equal protection of the law with no discrimination against a citizen on grounds of religion, race, offspring, birthplace or gender. This provision incorporates the concept of equal treatment and protection, as well as the prohibition against discrimination. The parents of the unvaccinated children could invoke this right on denying their children to attend schools on the basis that their children have not been vaccinated. Therefore, for parents of

unvaccinated children, the immunization requirement violates Article 8 which upholds the concept of equal treatment and protection from discrimination. However, further scrutiny of Article 8 suggests that a person may be discriminated on grounds other than the ones stated, i.e. religion, race, descent, place of birth or gender.

The authors contend that a person, specifically a child, can be denied entrance to schools if he or she does not comply with the compulsory vaccination requirement once implemented. The basis of this argument is clear. The compulsory vaccination policy does not ‘discriminate’ the child based on his religion, race, descent, place of birth or gender. The law is ‘discriminating’ him on the grounds of public welfare, whereby its main aim is to protect the community and other children from a transmutable disease that could be prevented by vaccination. In the case of *Datuk Haji Harun Idris v Public Prosecutor [1977] 2 MLJ 155*, the Court held that the rights under Article 8 is not an absolute right and it is still subjected to the law. In addition, discrimination is allowed by virtue of the doctrine of reasonable classification, and it is therefore up to the Courts to decide on whether a certain law is discriminatory or not. In the case of *PP v Su Liang Yu [1976] 2 MLJ 128*, the Court viewed that the provision of equality rights in the Constitution is a ‘state of mind’ rather than a fixed law, for which it can be interpreted in accordance to different circumstances of each cases. By applying the principle from both these cases on the issue of denying unvaccinated children to school, the Court should take into consideration the doctrine of reasonable classification.

Article 12 incorporates the rights with respect to education, whereby there shall be no discrimination against any citizen solely on the grounds of religion, race, offspring or place of birth. This provision is in line with the right to education which promotes the access to education, as embedded under the international law such as the Article 13 of Universal Declaration of Human Rights and the International Covenant on Economic, Social and Cultural Rights. In *Teoh Eng Huat v Kadhi Pasir Mas [1990] 2 MLJ 300*, the “wider interest of the nation” prevailed over a minor’s right to religion guaranteed by Article 11. In *Hajjah Halimatussaadiah v PSC [1992] 1 MLJ 513*, the Court subjected a public servant’s claim of a religious right to wear purdah at the workplace to the need of maintaining “discipline in the service”. Based on these cases, it can be deduced that any rights

granted under the Federal Constitution is not without limitations. The rights bestowed to a citizen are subjected to the Court's consideration based on each case's facts and circumstances.

The parents may declare that these provisions protect their unvaccinated children from being discriminated by being denied enrollment into schools and to get access to education as provided under Article 12. However, is it reasonable to classify unvaccinated children in the attempt to prevent them from enrolling into school? Does this violate their rights under Article 12? The authors argue that the possible answer to the question above would be, yes, it is reasonable to classify the unvaccinated children. Vaccinations are carried out to achieve herd immunity and to protect the community as a whole from the spread of these diseases that can be prevented by responsibly vaccinating the children. The trend of seeking individualism should be seen in the context that it is transient and subjected to change in accordance to any specific situation (Gostin, 2002). Individuals should be viewed as part of the society as each individual are dependent on each other for the purpose of health and security; therefore, they will benefit by being part of a society that seeks to prevent common risks (Gostin, 2002). The rationale of compulsory vaccination for children is to protect public health and to prevent outbreaks (Birnbaum, 2013). Endangering public health and herd immunity is not an option. The effects of a sufficient number of parents refusing vaccination for their children would substantially decrease the protection level of the community, reduce the herd immunity effect, and would increase the risk for the transmission of diseases (Malone & Hinman, 2003).

TO COMPEL OR NOT: HUMAN RIGHT PERSPECTIVES

Human rights are rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, religion and so on. These rights are the basic rights that are granted to a person as a human being. Bentham, in his theory, emphasised the moral rights to respect others' essential interests, such as life and liberty (Baujard, 2013). These include the right to life and liberty, freedom from slavery, freedom of expression, the right to education and others. Any person is seen as an autonomous individual as they are safeguarded by these fundamental rights. As opposed to the concept of "privilege" in the Middle Ages,

which was somewhat similar to a one-drop rule that was predominant in the United States. The term “human rights” is mentioned seven times in the United Nations Charter, whereby the Charter held the protection of human rights as the guiding principle of the entity and subsequently advocating human rights through international laws by establishing the Universal Declaration of Human Rights. Moreover, this measure emphasises the importance of having a good and healthy standard of living within society, where countries could protect these rights of its citizens by providing sufficient resources to an individual as per stated in Article 22 and Article 25 of the Universal Declaration of Human Rights.

Faruqi (2008) had made one assumption on the concept of human rights from political discourse, which is “human rights have a threshold weight against community goals and cannot be sacrificed because of utilitarian calculations of general public interest”. Although international and national laws have recognised the protection of human rights and the constitutional impacts of violations, some of these rights are not specifically for individuals. A certain group of people are allowed to exercise some collective rights. However, these collective rights may not simply override individual fundamental rights. Although UDHR has empowered individual as an autonomous entity, these rights and freedom are not absolute.

Both the imposition of compulsory vaccination and the rejection of vaccinations have been entwined in various ethical issues. The question is; should the individual rights prevail over public interest or vice versa? The issue of vaccination does not end at just the student’s enrollments in schools. A similar requirement may be implemented in the future, such as when being given a certain position, for certain professions and the right to travel (Lupu et al., 2017). Herd immunity is the most effective measure to reduce the adverse impacts of an epidemic outburst. Childhood vaccination can be the most efficient strategy to increase the level of herd immunity, and to reduce the likelihood of an epidemic to be imported and spread in the country. However, this approach will benefit developed and some developing countries as part of their investments in the public health infrastructure and services. This may not be cost-effective to many non-developing countries (Bambery et al., 2017). Giubilini (2019) had proposed three main moral obligations on vaccination. Firstly, any person has the

right to be protected from vaccine-preventable infectious diseases and it encourages a shared responsibility of the community to achieve herd immunity. Secondly, it is both an individual and collective obligation to be vaccinated, except in the case of intolerance to certain vaccine compounds. Lastly, each member of the community has an obligation to support effective vaccination policies. It can be contended that there is no right such as the right to refuse vaccination because any person is not entitled to harm others by not being vaccinated and pose the risk to the society by endangering the herd immunity (Flanigan, 2014). Therefore, compulsory vaccination is justified to protect the potential victims caused by weakened herd immunity (Flanigan, 2014).

Malaysia had ratified the United Nations Convention of the Rights of the Child (UNCRC) on 17 February 1995 (Dusuki, 2009). Article 3 of the UNCRC clearly states that “*in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration*”. Furthermore, it is also highlighted that the State must ensure that each child should get such protection and care that is necessary for the child’s well-being, taking into consideration the rights and duties of the child’s parents or guardians. Therefore, based on the provisions of Article 3 of UNCRC, it is contended by the authors that the government is acting in the best interest of the children if Malaysia was to implement the compulsory vaccination requirements for children upon enrolling to school. However, it would be difficult to determine the extent of this measure with respect to the best interest of the children, considering that the government has to balance the right to health and the right to education of the children. The World Health Organisation had stated that; “*Immunisation is a proven tool for controlling and eliminating life-threatening infectious diseases and is estimated to avert between 2 and 3 million deaths each year. It is one of the most cost-effective health investments*”. Therefore, it is important to not compromise the wish of some parents who do not want, or refuse to vaccinate their children.

In line with the UNCRC, the government has taken very active measures to protect these children through the National Child Protection Policy. This policy emphasises the strategies and procedures to deter any action amounting to neglect, abuse, violence and exploitation of

children (Ayub & Yusoff, 2018). However, this policy is limited, particularly with regards to immunisation among children. In relation to compulsory childhood vaccination, it is suggested that there should be a balance between the enjoyment of individual rights and community rights. Human rights are not absolute; of which restriction could be implemented for the benefit of the community. Compulsory vaccination as an enrollment requirement may be necessary to protect the public interest. For instance, the compulsory vaccination requirement can help to increase the level of herd immunity and to protect children at school from infectious diseases (Asari et al., 2018). Mustafa Khan and Zulkipli (2018) highlighted the problems that may arise due to the absence of specific legislations pertaining to compulsory childhood immunisation in Malaysia. They believed that anti-vaccine groups would view this loophole as an opportunity to deter the immunisation programme. Failure of parents or guardians to vaccinate children as an offence is yet to be included under the Child Act 2001 (Mustafa Khan & Zulkipli, 2018). However, it can be argued that Section 31(1) of the Child Act 2001 which states that *“Any person who, being a person having the care of a child— (a) abuses, neglects, abandons or exposes the child in a manner likely to cause him physical or emotional injury or causes or permits him to be so abused, neglected, abandoned or exposed; or (b) sexually abuses the child or causes or permits him to be so abused, commits an offence and shall on conviction be liable to a fine not exceeding twenty thousand ringgit or to imprisonment for a term not exceeding ten years or to both”* can be applied in the issue of refusing to vaccinate children by including this action under the definition of neglect, under the said section. In addition, the scope of the Prevention and Control of Infectious Diseases Act 1988 (PCIDA) is limited to matters related to the prevention of importation and control of the spread of infectious diseases, and has yet to specify compulsory vaccination as part of the infectious diseases eradication regime (Asari et al., 2018). Therefore, these are some of the limitations that need to be addressed.

CONCLUSION

The government, through the Ministry of Health, is anticipated to promote and educate the public on the immunisation programme. The Ministry must encourage every parent to ensure that their children receive immunisation, which is a safe and effective way of preventing

the spread of diseases. Failure to receive immunisation will expose children to various contagious diseases and would disrupt the control of disease within the community, which has been successfully achieved by the Ministry of Health.

If the vaccination of children were to be made compulsory, the authors believe that the government's interest in protecting the children and the community against vaccine-preventable diseases is justified. In addition, any exemptions should not be given to deter the compulsory vaccination, unless medical reason is provided. The matter of public health should be left in the hands of the experts and health authorities. Although the parents do have rights over their children, this does not warrant the children to suffer due to the whim of their parents who thought that they knew better. Hence, mandatory vaccination should be implemented immediately, such as been done in California. The authors are of the view that compulsory vaccination for children does not amount to transgression on their fundamental human rights, and is consistent with the principles of 'Maqasid Shari'ah' (the attainment of good) in order to promote herd immunity and to control vaccine-preventable disease outbreaks in Malaysia. It is the moral obligations of each parent to provide good health and better life for their children. Furthermore, both science and religion are interdependent to ensuring good health to humans and improving the quality of human life by protecting the public health at large. It is important to note that the public health carries more weight than individual freedom, therefore, the health safety of children should be prioritised instead of the parents' liberty. This paper advocates for certain mechanisms and guidelines to be imposed on parents or guardian to complete scheduled immunisation for their children prior to their enrolment into government education facilities. Hence, the government should intervene to provide standard health and life to their citizens by enforcing compulsory vaccination in Malaysia. Health authorities should play a better role in promoting benefits of vaccines to infants and children, and educate the public on the ways it will help to boost the weakened immune system.

ACKNOWLEDGMENT

This research received no specific grant from any funding agency in the public, commercial, or not-for profit sectors.

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