



Compulsory Childhood Vaccination: Children's Best Interests as Paramount Consideration

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Abstract. Childhood vaccination has played a significant role in reducing mortality rates among children, targeting various preventable diseases like smallpox, poliomyelitis, meningitis, and diphtheria. Some countries have even enacted compulsory childhood vaccination laws due to their proven effectiveness in countering life-threatening infectious illnesses in infants. Despite its success, childhood vaccination is confronted by conflicting interests, encompassing parental rights, medical officers and state prerogatives, public rights, and children's rights in making decisions about immunization. This study concentrates on exploring the concept of compulsory childhood vaccination in Malaysia, with a focus on the principle of prioritizing the best interests of children. The primary discourse examines the necessity of compulsory childhood vaccination and the complexities involving the collective and individual best interests of children when deliberating vaccination choices. The authors utilized qualitative research to gather data for this study. Through an examination of relevant legislation, notably the Child Act 2001, it is evident that safeguarding children's best interests should take precedence when addressing childhood vaccination. Instances from other countries that have enforced compulsory childhood vaccination laws are also examined. This research, through its thorough analysis of legal and policy frameworks related to mandatory childhood vaccination, serves to enhance scholarly understanding by bridging gaps in existing research and inspiring further investigation into the matter within the Malaysian context.

Keywords: Childhood Vaccination, Compulsory Vaccination, Vaccination, Children's Best Interest.

1 Introduction

Childhood vaccination involves administering vaccines to children, prompting their immune systems to generate antibodies tailored to particular diseases. Given that children possess weaker immune systems, this procedure assumes significance in bolstering their immunity, aiding them in recognizing these specific illnesses and enhancing their ability to effectively fight against them. (Frequently Asked Questions on Vaccines and

Immunisation, 2020). Childhood vaccination has demonstrated its efficacy as a successful tool in controlling and eradicating mortality among children due to numerous diseases that can be prevented through vaccines. The year 1980 marked the eradication of Smallpox through vaccination, a formerly deadly disease known for causing severe scarring or blindness and high fatality rates (Greenwood, 2014). Vaccination produces a significant outcome known as herd immunity, wherein immunization provides protection not only to the vaccinated person but also extends indirect protection to those who have not received vaccines. This occurs because of the presence of vaccinated individuals in their surroundings. Individuals who cannot receive vaccines due to age, medical restrictions, prior allergic responses to vaccines, or underlying health conditions rely on herd immunity for their protection (Diekima, 2009).

Nevertheless, even though the effectiveness of vaccination in controlling and eradicating life-threatening childhood diseases has been established, certain groups continue to undermine this achievement by rejecting vaccination for various reasons such as religious, scientific, and political factors. The hesitancy surrounding vaccines, particularly among parents, contributes to a rise in cases where vaccination for their children has declined. According to the Ministry of Health Malaysia (MOH), the instances of vaccine refusals documented in healthcare clinics witnessed a consistent rise, escalating from 637 cases in 2013 to 1,603 cases in 2016. In the year 2018, the Ministry documented six (6) fatalities caused by measles, all of which occurred in individuals who had not received immunization. Additionally, there were five (5) diphtheria-related deaths, with four (4) cases having no immunization, and a total of 22 fatalities attributed to pertussis, out of which 19 cases were linked to non-immunization. (Arumugam, 2019). The year 2019 marked a critical moment concerning childhood vaccination, as Malaysia faced a significant escalation in the matter with the confirmation of a polio case. This incident occurred after a span of 27 years during which the country had maintained a polio-free status. (Chung, 2019). In response, the Ministry of Health Malaysia (MOH) took decisive action by establishing a task force tasked with formulating a proposal for compulsory childhood vaccination. The primary objective was to enforce at least 2 out of the 12 childhood vaccinations as compulsory, as a strategic approach to address the challenge of vaccine refusal among children. (“Minister ready”, 2019).

Before considering the implementation of compulsory childhood vaccination regulations, various conflicting concerns must be carefully evaluated. These include considering the rights of parents, medical professionals, and the state, as well as the rights of the public and children in making choices regarding vaccination. This paper discusses compulsory childhood vaccination in Malaysia considering the children’s best interest principle. This paper employs a doctrinal analysis and secondary data from academic journals and online databases. The authors adopted a qualitative research method to gather data in writing this paper. The primary data are collected and analysed. The sources of the data are judgment of court cases, legislations, policies, and guidelines on compulsory vaccination of children and its comparison with other countries. Library research is used to get the reference on the concept of compulsory vaccination based on textbooks, journal articles, and other relevant materials. Reference is also made through manuscript materials or brochures available from the health clinics and Ministry of Health Departments. Reference will also be made to the practise of

childhood vaccination and decided cases from other countries such as the United States and Australia.

1.1 Childhood Vaccination Program in Malaysia

With the aim of enhancing compliance with childhood vaccination rates in Malaysia, the National Immunisation Program (NIP) has been implemented since 1950. Administered as part of the Maternal & Child Health Programs (MCH) under the Ministry of Health (MOH), this initiative provides unfettered access to cost-free vaccinations for all children. However, starting from 2015, non-Malaysian individuals are subjected to a nominal fee for vaccination services. The NIP offers protection against 12 communicable diseases affecting children, including Diphtheria, Haemophilus influenza type B (HIB), Hepatitis B, Human papillomavirus (HPV), Japanese encephalitis (JE), Measles, Mumps, Pertussis (whooping cough), Poliomyelitis (polio), Rubella, Tetanus, and Tuberculosis (TB). (Immunise4Life, 2019).

Usually, free vaccinations are dispensed at government health establishments, but a limited set of vaccines are allocated through the School Health Service. Specifically, the MR and DT vaccinations are administered to 7-year-olds, while 13-year-olds receive the HPV vaccine. Additionally, Tetanus vaccination is offered to 15-year-old students (Kusnin, 2017a). In order to ensure equitable access to vaccines for all children, the Ministry of Health (MOH) administers free vaccinations through various avenues, including outreach programs, door-to-door campaigns, and additional immunization initiatives. While the National Immunisation Program (NIP) has played a role in increasing compliance with vaccination rates, it lacks legal enforcement and operates solely as a clinical vaccination guideline. Its primary objective, apart from reducing childhood complications, is to aid medical professionals and pediatricians in making informed clinical decisions through evidence-based information on childhood vaccination. Additionally, the MOH initiated the National Immunisation Promotion Campaign 2016-2020 to address the issue of vaccine refusal among parents. This campaign aims to dispel rumors and erroneous claims regarding vaccine safety, often perpetuated by the anti-vaccination movement. The MOH also maintains a strong and collaborative partnership with the Ministry of Education. The National Childhood Immunisation Program and the comprehensive School Health Program automatically include students in school-based vaccination programs. Parents who decline vaccination for their children are required to explicitly opt out of the program (Kusnin, 2017b).

Currently, Malaysia lacks dedicated legislation that renders childhood vaccination compulsory for all. Consequently, parents within the country retain the freedom to decline vaccination for their children without the worry of facing legal repercussions. Starting from December 2015 up to the present, the Ministry of Health (MOH) has consistently issued statements advocating for the implementation of compulsory vaccination laws. In 2019, recognizing the urgency of the matter, the MOH established a task force to formulate a proposal for compulsory childhood vaccination. The primary objective is to enforce the requirement of at least 2 out of the 12 childhood vaccinations as compulsory measures (Borneo Post Online, 2019). Upon careful review of the feedback provided by the vaccination task force, which encompasses representatives from

various ministries, governmental and private entities, as well as non-governmental organizations, the Ministry of Health has opted against implementing compulsory childhood vaccination. Rather, the chosen strategy will focus on improving and enhancing the existing service delivery framework. This will involve increase in tracing of cases, employing educational methods, and increasing promotional activities to encourage childhood vaccination (The Star, 2020).

2 Justifications for Compulsory Vaccination Laws

In his ground-breaking study of liberty, John Stuart Mill introduces the 'harm principle,' which asserts that an individual is at liberty to pursue their actions as long as these actions do not inflict harm upon others (Mill, 2010). Alternatively, if actions pose a risk of harm, the state may intervene to prevent such actions. This principle also serves as a foundation for compulsory vaccination regulations in the United States, as demonstrated in the case of *Jacobson v. Massachusetts* (1905). The decision later becomes one of the most important pieces of public health jurisprudence. The Court's decision was based on the view that the freedom of the individual must sometimes be subordinated to the public health and welfare. In applying this principle, state and school compulsory vaccination programs are created to provide health benefit and protect both the vaccinated individual and others in the community. Subsequently, this ruling emerged as one of the most important pieces of public health legal precedent. The Court's judgment stemmed from the perspective that individual freedom, on occasion, must surrender to the greater concern for public health and welfare. In accordance with this principle, state and school-enforced compulsory vaccination programs were established to provide health advantages and protect both the vaccinated person and the wider community.

Savulescu on the other hand outlined four ethical justifications for compulsory vaccination laws:

1. If the threat to public health is grave,
2. The confidence in safety and effectiveness is high,
3. The expected utility of mandatory vaccination is greater than the alternatives; and
4. The penalties or costs for non-compliance are proportionate. (Savulescu, 2020).

According to him, penalties or costs could include benefits suspension, imposing fines, assigning community service, or limiting personal freedoms. With regard to children, significant risk of harm to the child is also a ground for state protection. For instance, if a child brings a container of hazardous bleach to school, endangering both himself and fellow students, teachers possess the authority to intervene and eliminate the danger. This is justified due to the risk posed to the child as well as other children (Bamberg et al, 2013).

3 Protecting Children's Best Interests versus Consent to Vaccinate

While compulsory vaccination laws effectively address the challenge of childhood vaccination refusal, they also give rise to conflicting concerns. This stems from the perception that mandating children's vaccination encroaches upon parental rights to decide what they deem as most beneficial for their children. The essential question emerges: does achieving herd immunity warrant encroaching upon these rights? Consequently, this creates a legal dispute between parents and the state. In resolving this dilemma, courts are tasked with mediating while upholding the rights and best interest of the child in every scenario.

The International Convention on the Rights of the Child defines a "child" as "any human being under the age of eighteen years, unless the legal regulations pertinent to the child specify an earlier attainment of majority." In Malaysia, the Child Act 2001, Section 2, defines a "child" as an individual under eighteen years of age. Under this Act, children are regarded as lacking the capacity to provide consent for medical procedures, including vaccinations. The Act also stipulates that parents in their capacity as legal guardians, possess the authority to give consent on behalf of their children. However, this parental consent authority is not absolute, as the core objective of the Child Act 2001 is to safeguard and promote the welfare and interests of children above all else. This principle is outlined in Section 17 of the Act, where if there are reasonable grounds to believe that a child requires care and protection (including medical evaluation and treatment), the child can be taken into temporary custody by a protector or a police officer. This situation may arise in cases of neglect, abuse, physical or mental harm, or when the parents are deemed unfit.

Section 31(4) of the Act further provides "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." In this regard, 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. Thus, these provisions under the Child Act 2001 confirm that parents do not have absolute authority in making decisions on behalf of 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 to life-threatening vaccine preventable diseases.

The court's approach towards limits of parental consent varies according to cases. In situation where the court views that consent of the parents will benefit the child, the consent is deemed valid. In *Re C (HIV Test)*, the court allowed a baby born to a HIV positive mother to be tested for HIV because it is in the best interest of the child, despite the parents' disapproval. The court agreed that there is a presumption that the parents' consent for treatment of the child is for the best interests of the child, however such

presumption is rebuttable. In this case, it was held that there are limits to parental consent, and it is not absolute. In contrast, the court in *Re T (A Minor) (Wardship: Medical Treatment)* took a different view and held that parental wishes are determinative. In this case, the parents of an 18 months old baby boy suffering from a severe liver defect refused to consent to a liver transplant for their baby. The parents who have medical background considered the fact that their baby had already undergone countless unsuccessful surgeries at his early age which had caused much pain and suffering. The court held that a loving parents' decision not to cause further distress towards a child who suffered from a terminal disease is valid, as it was done in accordance with the child's best interests. These two cases can be applied in the situation of parental refusal for childhood vaccination. The court ought to consider whether the parents' decision not to vaccinate their children is done reasonably or not.

The common law assumption that a person under 18 years of age did not have the capacity to make health decisions, including consenting to medical treatment on their own behalf changed in the English case of *Gillick v West Norfolk & Wisbech Area Health Authority* (1985), and the High Court of Australia's case *Department of Health and Community Services (NT) v JWB and SMB* citation (*Marion's case*) (1992). The two cases introduced 'mature minor principle' where minors under 8 years of age may be able to make healthcare decisions on their own behalf if they are assessed to be sufficiently mature and intelligent to do so. There has been a number of cases internationally where the courts have authorised the vaccination against the wishes of at least one of the parents. In this instance the court ruled acting in the best interest of the child and based their decision on the scientific evidence presented, including risk assessments by medical practitioners.

In the Family Court of Australia case of *Duke-Randall & Randall* (2014), a divorced couple with opposing views on vaccination applied to decide on behalf of their children. The mother's objections were based on the associated risks, while the father's concerns included the impact of limitations placed upon his children if they were not vaccinated. The children were found by an immunologist not to be susceptible to a greater risk of vaccine-related harm and Justice Foster deemed this evidence to be determinative. In this case, the court ruled that the father could have his children vaccinated.

In another case of Queensland Supreme Court, *Re H* (2011), both parents refused to vaccinate a child born to a mother with chronic hepatitis B, thereby exposing the child to a 10–20% risk of infection. If infected, the child had a 90% chance of developing a chronic infection, and consequently a 25% chance of developing cirrhosis and/or hepatocellular carcinoma. The baby could not be tested until nine months of age, but could be vaccinated against the possibility of infection immediately. The medical team contended that the child should be vaccinated to greatly reduce the risk of infection. In this case, the court ordered that the child be vaccinated.

In the recent case of *Vavricka and Others v the Czech Republic* (2021), the Grand Chamber of the European Court of Human Rights deliberated for the first time on the compatibility of compulsory childhood vaccination with the European Convention on Human Rights (ECHR). Within the Czech Republic, the Public Health Protection Act of 2000 and an implementing ministerial decree require childhood vaccinations against nine diseases. Failure by parents to comply, except for valid reasons, constitutes an

offense that can lead to sanctions. The lead applicant, Mr. Vavricka, received a fine for his refusal to have his 14 and 13-year-old children vaccinated against poliomyelitis, hepatitis B, and tetanus as mandated by the State. Despite his appeals, domestic courts upheld the fines. Similarly, the remaining five applicants declined some or all of the nine vaccinations, resulting in their children's exclusion from preschool. In this context, the Court said, "...It is well established in the Court's case-law that in all decisions concerning children their best interests are of paramount importance. This reflects the broad consensus on this matter. Thus, a state obligation exists to prioritize the best interests of children, both individually and collectively, in all decisions impacting their health and development." The judgment unequivocally emphasizes that the best interest of children must always take precedence. Regarding vaccination, the primary goal is to ensure the protection of every child against severe illnesses, either through vaccination itself or by virtue of achieving herd immunity. The Czech health policy could be said to be consistent with the best interests of the children who were its focus.

4 Conclusion

Childhood vaccinations have been proven to succeed in controlling and eliminating life-threatening infectious diseases among infants. Through vaccination, morbidity and mortality for many vaccines preventable diseases such as smallpox, poliomyelitis, meningitis and diphtheria have been significantly reduced and, in some cases, totally eliminated. Therefore, it is indeed a worrying trend to see parents who refused vaccinations for their children for unreasonable reasons, leading to risking their own children's lives as well as the lives of others. As children are the future generations of the country, it is highly crucial for the Malaysian government to address this issue seriously, by enforcing compulsory legislation on childhood vaccination even though it means restricting the rights of the parents in deciding for their children.

In this regard restrictions on parents' individual rights are justified for two reasons, for the benefit of the individual or the benefit of the community. In an emergency situation there may be a need to protect the health of an individual (a child) even though it means overriding parental autonomy. (Asari et al, 2018). Many countries have already resorted to compulsory vaccination laws. These laws restrain parental autonomy in order to protect the public from infectious diseases since unvaccinated individuals pose great risk to the community. In deciding whether to give or refuse consent for treatment, parents must first give primacy to the best interest of the child, failing which the court's approval should be sought. In this regard, the court is taking a paternalistic approach in deciding in favour of the child's best interest. (Marion's case, 1992).

Seeing the worrying trend of vaccine refusal cases on the rise, it is time for punishment to be carried out towards parents who refused vaccination for their children. As the first step, reference can be made to countries that have made vaccinations compulsory such as United States and Australia. The Malaysian government may propose a legal framework to ensure better vaccination coverage, by making parents responsible under criminal law for their refusal to vaccinate their children and barring unvaccinated children from entering day care, nursery, and public schools as being enforced in United

States and Australia at this moment. On the other hand, there is a need to understand and be empathetic to the rationale underlying parents' views not to vaccinate their children. Here, both the state and the health practitioner's role are highly important. For the health practitioner, it is crucial to come up with the best way to communicate with parents who refuse vaccination for their children. Among the recommendations are, to acknowledge the difficulties in making this decision, responding to parents' individual concerns and emotional cues, which may point to fear or anxiety, careful attention to clinical history taking which may reveal an event which triggered doubt, and reporting of every suspected or perceived adverse event following immunization. (Helps, C., et al. 2019). Similarly, the state must also continuously educate the public on the need for childhood vaccination and readily counter fake news about vaccines.

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