

Mandatory Vaccination in Malaysia: Analysis on Constitutional Framework in Relation to the Human Rights' Issue

Mohd Lotpi bin Mohd Yusob^{1*} , Puteri Nur Zahirah Binti Muhammad Ali² 
Umami Sharifatul Jannah Binti Makhtar³ , Nusrah Al-Khairiah Binti Rosdi⁴ 

¹Faculty of Law, Universiti Teknologi MARA, Cawangan Perak, Kampus Tapah, 35400 Tapah Road, Perak, Malaysia

Email: mohdlotpi@uitm.edu.my

²Faculty of Law And International Relations, Universiti Sultan Zainal Abidin, (Unisza), Gong Badak Campus, 21300 Kuala Nerus, Terengganu, Malaysia

Email: puteriturzahirah01@gmail.com

³Faculty of Law And International Relations, Universiti Sultan Zainal Abidin, (Unisza), Gong Badak Campus, 21300 Kuala Nerus, Terengganu, Malaysia

Email: ummisharifatuljannah@gmail.com

⁴Faculty of Law And International Relations, Universiti Sultan Zainal Abidin, (Unisza), Gong Badak Campus, 21300 Kuala Nerus, Terengganu, Malaysia

Email: nusrahmmp@gmail.com

ABSTRACT

CORRESPONDING

AUTHOR (*):

Mohd Lotpi Mohd Yusob
(mohdlotpi@uitm.edu.my)

KEYWORDS:

Mandatory vaccination
Fundamental liberties
Constitution
Discrimination
Human rights

CITATION:

Mohd Lotpi Mohd Yusob, Puteri Nur Zahirah Muhammad Ali, Umami Sharifatul Jannah Makhtar, & Nusrah Al-Khairiah Rosdi. (2025). Mandatory Vaccination in Malaysia: Analysis on Constitutional Framework in Relation to the Human Rights' Issue. *Malaysian Journal of Social Sciences and Humanities (MJSSH)*, 10(4), e003376 <https://doi.org/10.47405/mjssh.v10i4.3376>

The unprecedented COVID-19 pandemic has been the main focus of every Malaysian for the last few years. Vaccinations are crucial for protecting vulnerable groups including infants and those with impaired immune systems. Few countries have declared COVID-19 immunisation 'mandatory' in order to raise vaccination rates while others are still debating whether they should do the same. Hence, this paper underscored the issues on compulsory vaccination pertaining to whether it violates the fundamental liberties incorporated in the Malaysian Federal Constitution in the purview of Article 5(1) on the issue of right to life and equality as well as human rights principle. The researchers adopted a doctrinal approach, where the data is analysed using the inductive, deductive method and materials were accumulated from the Malaysian and other jurisdictions' legislations, case laws, journal articles, and others. This paper is intended for policymakers as well as the public to understand the possibility for implementing compulsory vaccinations from a legal perspective. This research also unravels and proves that mandatory COVID-19 vaccination does not amount to contravention and intervention on their fundamental human rights and is consistent with the constitutional principles in order to promote herd immunity.

Contribution/Originality: This study contributes to a comprehensive understanding of the complex interplay between public health objectives and individual rights, while counting on cultural, religious, and socio-economic factors. It also contributes to an understanding in harmonizing between individual interest and societal needs where the society who holds bigger effects must prevails.

1. Introduction

The unprecedented COVID-19 pandemic has been the primary focus of every Malaysian for the past 4 years until now. Immunisation strategies, which include vaccinations, are crucial for protecting vulnerable groups including infants and those with impaired immune systems from disease. The government has proactively taken initiatives to provide health and life protection to their citizens by enforcing compulsory vaccination in Malaysia. The determination of mandatory immunisation, along with other public health measures, should be based on the most reliable evidence and carried out by authorised decision-makers in a transparent, fair, and unbiased manner that involves the participation of affected parties so that it will not contravene or violated the human rights and equality by virtue of Article 5(1) of the Federal Constitution.

This article underscored the issues on compulsory vaccination on whether it violated the fundamental liberties as enshrined in the Federal Constitution within the purview of Article 5(1) on the issue of right to life and equality as well as human rights principle. This article also intended to propose solutions for the government to promote its legality of the vaccines from a legal perspective.

Vaccinations sparked intense discussion and even some resistance ([Bor et al., 2023](#)). Disruptive public demonstrations opposing vaccination laws have occurred concurrently in a number of Western nations. Survey data indicates that immunisation status is another factor contributing to the emergence of public divides. People who follow health officials' guidance ethically denounce unvaccinated people for breaking the social compact during a crisis. Those who have been vaccinated will have challenges and hardship if they are in close proximity to the unvaccinated groups since these people are more likely to catch the virus due to no internal protection ([Fisman et al., 2022](#)). The existence of those who oppose the government's effort to reduce the COVID-19 illness, will arouse the anxiety of the vaccinated peoples especially for individuals who are most likely to be infected. Meanwhile, individuals who decline vaccinations claim to be subjected to coercion and discrimination against their choice ([Cheng, 2022](#)).

In [Jacobson v. Massachusetts \(1905\)](#), the United States of America Supreme Court ruled that mandatory vaccination programmes have not violated the fundamental rights to life, liberty, and the pursuit of happiness. Swedish immigrant Jacobson disobeyed the law and refused to vaccinate either himself or his child ([Gostin, 2005](#)). The Supreme Court has ruled that the vaccination requirement does not violate the individual freedoms guaranteed by the US Constitution. The Supreme Court adopted a collectivist position, permitting public health to take precedence over individual liberty, so long as the restrictions enforced do not 'go so far beyond what was lawfully necessary'. In the judgement, The Court states that "A principle which recognises the right of each individual to use his own (liberty), whether in respect to his person or his property, regardless of the injury that may be done to others, could not operate to produce real liberty for all".

Unlike the US, Malaysia is not a common law country. Article 5(1) of the Federal Constitution states "No person shall be deprived of his life or personal liberty except according to a procedure established by law". Additionally, Section 11(1) of the Prevention and Control of Infectious Diseases Act of 1988 (the "PCID Act") gives the Ministry of Health (MoH) the authority to declare any region as a "affected local area." Section 11(3) then provides the authorised direction of any "person or class or category of persons" dwelling in the polluted local area by an "authorised officer". This includes

guidelines for monitoring, isolation, immunisation, treatment, and any other actions the authorised officer thinks necessary to contain the disease. According to Section 2 of the PCID Act, an approved official is "any Medical Officer of Health, any health inspector, or any officer appointed by the Minister".

Apart from that, a refusal of vaccines by certain groups were cited on the grounds of vaccination safety, hesitancy, underlying medical disorders, herd immunity, opaque data, and use of alternative or complementary therapies as well as halal status of the vaccine concerned the muslim. The negative consequences of the COVID-19 vaccine, as reported by certain untrained parties, have become one of the factors contributing to the rise of anti-vaccine groups ([Jafar et al., 2022](#)). Moreover, the COVID-19 vaccine's overall efficacy is still being evaluated and has not yet been authorised. All of these points are the main reason for certain groups of people to not be vaccinated. As a result, they wonder if the government has been discriminating against them by imposing limitations on their access to public spaces and other things even if it has not been authorised yet.

1.1. Research Objectives

This study aims to evaluate the legality of government-mandated vaccination within the framework of Article 5(1) of the Federal Constitution, which safeguards an individual's right to life and personal liberty. The analysis examines whether such mandates infringe upon fundamental liberties and to what extent the government can justify such measures in the interest of public health. Additionally, the research explores the principle of equality in vaccination under Article 8(1) of the Federal Constitution, which ensures that all individuals are treated equally under the law. This aspect assesses whether the vaccination policies have been implemented without discrimination and whether any disparities exist in accessibility or enforcement. Lastly, this study proposes legal solutions to strengthen the government's approach to vaccine implementation, ensuring compliance with constitutional provisions while promoting public confidence. By addressing these legal concerns, the government can enhance the legitimacy of vaccination policies and foster greater public trust in health-related regulations.

2. Literature Review

It is impossible to deny the fact that certain vaccines do in fact produce certain unpleasant effects in a very small percentage of human recipients. For instance, mercury in vaccines has been implicated as a causative factor in the development of Autism Spectrum Disorder (ASD) ([Wakefield et al., 1998](#)). However, a number of research have proven that there is no concrete evidence that correlates vaccinations with the development of autism or autistic spectrum disorder ([Taylor et al., 2002](#); [Taylor et al., 2014](#)). Many infectious diseases have dropped significantly since vaccinations were introduced. One of the most cost-effective approaches to prevent infectious disease transmission and mortality is injections. If vaccine awareness was global in scope, nearly a million lives may be saved each year ([Aldajani et al., 2023](#)).

A vaccination policy that requires all individuals to get the shot as part of their legal obligations is an example of a public health intervention that has the potential to be both successful in preventing the transmission of illness and beneficial in building up herd immunity ([Abdul Shukor et al., 2021](#)). Despite the phrase, "mandatory vaccination" does not typically include coercing individuals to get shots. To rephrase, "you must be vaccinated" is not the same as "you must be vaccinated in order to...". While there are

benefits to vaccination, mandatory vaccination regimes limit individual agency by making vaccination mandatory and reprimanding those who choose not to get vaccinated (Smith & Emanuel, 2023). Despite the prevalence of vaccination mandates, it is important to note that the World Health Organisation (WHO) does not endorse the present mandates for vaccination against COVID-19. This is something that should be taken into consideration. Instead, the WHO stresses the importance of educating the public and expanding vaccine availability (World Health Organization, 2022).

The examination of obligatory vaccination's potential violation of human rights, as entrenched in Articles 5(1) and 8(1) of the Federal Constitution, has brought attention to fatwas and legal provisions pertaining to vaccination. Furthermore, the examination of human rights is also interchangeably explored in conjunction with the matter of fundamental freedom in a comprehensive manner. The utilization of this approach has provided the researchers with valuable supplementary data, hence enhancing the accuracy of the conclusions in the present research.

The protection of an individual's health is safeguarded by international legal frameworks that apply to the field of human rights. It is evident that there exists a moral imperative to undertake necessary measures in order to prevent, treat, and manage epidemic diseases. The recognition of this right, coupled with the corresponding responsibilities, as acknowledged in around two-thirds of country constitutions worldwide, may provide a compelling basis for enacting mandatory vaccination legislation (King, 2022).

Protections for human rights are not absolute; it is possible that infringing on a right could be justifiable if it posed a risk of causing harm to other people. Any such limits must be imposed by law and required in a democratic society in line with the legal principle of proportionality, as is needed by the generally accepted principles of democratic constitutional law and international human rights law. If someone has to get a vaccine in order to enjoy or exercise a basic human right, like the right to work, the right to health, education, religious practices, freedom to protest, that person should be expected to be unable to refuse the vaccine.

The introduction of mandatory vaccination restrictions has the potential to violate not just a range of distinct human rights, but also the right to be treated equally. In this way, they are essentially equivalent to effective public health policies such as stay-at-home orders. A vaccine mandate is not considered required by this set of standards if the individual may avoid it without excessive hardship. The factors must be considered while determining what constitutes an unnecessary burden. In general, testing swiftly, wearing safety equipment, and keeping a correct social distance should not be regarded as an unnecessary difficulty.

Article 5(1) of the Federal Constitution has stated that, (1) no person shall be deprived of his life or personal liberty save in accordance with law. In this regard, the recent Federal Court decision in *Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan & Anor.* (2002), should be seen as a setback for the expansion of liberties and constitutional protections in Malaysia. The case was heard in the Federal Court of Malaysia. Sugumar Balakrishnan sought to have his entry permit to Sabah reinstated. However, the Federal Court ruled that the right to personal liberty under Article 5 of the Constitution should not be interpreted broadly or generously, ultimately rejecting Sugumar's application.

Article 5(1) and, by extension, article 8(1), are viewed as a return to earlier constitutional thinking due to their expansive interpretation and extensive statement of fundamental rights. In the result the Federal Court overruled a developing jurisprudence in the Court of Appeal of a rights-based interpretation of the Constitution contained in a trilogy of cases namely, *Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor* (1996), *Hong Leong Equipment Sdn Bhd v Liew Fook Chuan* (1996) and *Sugumar Balakrishnan v Pengarah Imigresen Negeri Sabah & Anor* (2002). The genesis was in Tan Tek Seng's case. It was concerned with procedural fairness and the constitutional rights of a civil servant facing dismissal.

Gopal Sri Ram JCA in *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Another* [1996], speaking for the Court of Appeal, posited that 'life' under Article 5(1) meant more than mere existence. He said, *"Adopting the approach that commends itself to me, I have reached the conclusion that the expression 'life' appearing in Article 5(1) 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. Of these are the right to seek and be engaged in lawful and gainful employment and to receive those benefits that our society has to offer to its members. It includes the right to live in a reasonably healthy and pollution free environment. For the purposes of this case, it encompasses the right to continue in public service subject to removal for good cause by resort to a fair procedure"*. The G Sri Ram ruling highlights that vaccination can be considered as a component of quality of life, and this interpretation aligns with the word 'life' in Article 5(1) of the Federal Constitution (Das, 2022).

In addition, the book of Constitutional Law of the European Union, authored by [Lenaerts et al. \(2010\)](#) is also one of the important sources that will complement this research. The book focused on the issue of discrimination, specifically in relation to Article 8(1) of the Federal Constitution. It discussed the idea of equal treatment, which necessitates that individuals in similar circumstances should be treated equally. The principle in question is moreover a fundamental tenet of Community law, as explicitly stated in the Charter of Fundamental Rights of the European Union (EU) ([Lenaerts et al., 2010](#)). This book also elucidated several forms of discrimination that are in violation of human rights, such substantive, reverse, direct and indirect discrimination. This can serve to bolster the argument pertaining to the issue of discrimination in the context of mandatory vaccination.

Furthermore, the article of 'Legal, Constitutional, and Ethical Principles for Mandatory Vaccination Requirements for COVID-19' by [King et al. \(2021\)](#) is also perused and referred to support the present research's conclusions. This article mainly talks about law-making: the notion of legality and multi-level governance, vaccination requirements imposed by non-state entities in part 1. Part 2 depicts human rights: equality, proportionality and exemptions and also constructive interaction with vaccination reluctance. Moreover, the remaining portion talks about the international influence of national mandated vaccination, educational vaccine requirements in school and universities, the access to public venues and spaces and others.

Therefore, the main articles incorporated in this study possess inherent limitations and shortcomings, necessitating the inclusion of additional articles to enhance the quality of our findings. The literature review offers a solid foundation for this study; nevertheless, it does not particularly address our research. Therefore, the objective of this research is to fill the gap that has not been explored and address it from multiple perspectives.

3. Research Methods

The method employed in the research methodology is library-based research or known also as content-based analysis. A legal analysis is primarily invoked because the focal point of this article is to analyse Articles 5(1) of the Federal Constitution. Generally, this research will apply two main methodologies, namely data collection and data analysis methodology.

In data collection methodology, several forms of data from different sources will be gathered and screened for this research. The data includes primary, secondary, direct and indirect data. This data may come from textbooks, journals, articles, thesis, proceedings and others. This research is clearly constitutional study and therefore it will rely specifically on statute, decided law cases, legal textbooks, legal scholarly articles and legal proceedings.

In this data analysis methodology, the data will be chosen, filtered and analysed after it was collected from the plethora of sources. The data will be classified in accordance with its relevance to the research topic. After the classification is done, it will be analysed thoroughly. In classifying and analysing the said data, two methods will be applied, namely, inductive method and deductive method. In inductive method, the specific data will be analysed before making a general conclusion. This research will seek to reach a general conclusion and the critical commentary will be provided in certain situations. This method will be hugely applied where the sources of law, jurist's opinion and law cases will be examined in framing the approaches for the judges in this case. The deductive method is applied in proving the general finding which is extracted from the examination on the specific data. In this method, the research will go through all general information or conclusions and prove them on the specific cases. This method will be used in examining and analysing the approach and practice of the court.

4. Results

4.1. The Vaccination Within the Purview of Article 5(1) of Federal Constitution

In Malaysia, vaccination is implemented through the National Immunisation Programme (NIP) that was established in Malaysia in the early 1950s ([CodeBlue, 2020](#)) after the Expanded Programme on Immunisation (EPI) developed by WHO ([Immunise4Life, 2023](#)). Vaccines are utilised to promote enhanced worldwide health and it was estimated that more than one million children around the world died due to limited access to conventional vaccines ([Mantovani & Santoni, 2018](#)). The vaccination is free for all Malaysian citizens in the government facilities. They have been a part of Maternal and Child Health (MCH) programs since the 1950s. Non-Malaysians were required to pay a small price for vaccinations beginning in 2015. The program delivers complimentary vaccines to non-Malaysians as part of outreach programs, cleanup efforts, and Supplementary Immunisation Activities (SIA) ([Tengku Muhammad Fakhruddin et al., 2023](#)).

The efficacy of COVID-19 vaccines in reducing severe illnesses and fatalities resulting from COVID-19 infection has been well-established ([World Health Organization, n.d.](#)). The National Immunisation Programme for COVID-19 (PICK) in Malaysia was launched on 24th February 2021 with the aim of halting the transmission of the infection and bringing

an end to the pandemic through a large-scale vaccination campaign ([National Pharmaceutical Regulatory Agency \[NPRA\], 2023](#)).

Article 5(1) of Federal Constitution stated that, no person shall be deprived of his life or personal liberty save in accordance with law. Article 5(1) can be interpreted in four which are any person, personal liberty, life and save in accordance with law. Any person, can be anyone whether it is citizen or non citizen. Referring to the case of [Loh Wai Kong v Government of Malaysia & Ors \(1979\)](#), Article 5(1) protects everyone's freedom, even non-citizens, and is not solely relevant to citizens in this nation.

Moreover, Av Dicey defined personal liberty as a person's right to be free from physical force, arrest, or imprisonment in any situation when there is no acceptable legal basis ([Olomojobi, 2017](#)). The ability to act whichever one pleases, limited by the rules of behaviour and legislation of the community. It appeared that the courts applied a stringent meaning of "personal liberty" as used in Article 5(1). According to the case of [Government of Malaysia & Ors v Loh Wai Kong \(1979\)](#), Loh Wai Kong petitioned the High Court for a passport. He claimed that he had a right to travel overseas and passport refusal infringed this right. The learned court denied the application, thus Loh Wai Kong appealed to the Federal Court. The Federal Court held that Article 9 of Federal Constitution does not address the right of citizens to travel abroad or hold a passport. Citizens cannot leave the country without permission due to the constitution's inability to guarantee rights outside the jurisdiction. The freedom to travel abroad is not based on international law, but rather on treaties, conventions, agreements, and practice ([Higgins, 1973](#)). The Federal Court in the Loh Wai Kong also stressed that the government may have the power to prevent citizens from leaving the country under specific circumstances. The Federal Court emphasized that Article 5 defines personal liberty as freedom that pertains to or concerns an individual's person or body. No rights are granted to the citizen by that article. A person's departure may be prevented by the government and the nation.

In [Sugumar Balakrishnan v Pengarah Imigresen Negeri Sabah \(1998\)](#), six months before the permit's expiration, the applicant's West Malaysian entry permission to Sabah was revoked. The issue is does he have the personal freedom and rights to were impacted by the cancellation of the a permission to enter?. The Federal Court states that only the respondent is allowed to enter and live in Sabah based on the entry permission. However, the entry licence does not automatically grant the respondent any right to subsistence. The rights guaranteed by article 5(1) of the constitution can be removed in compliance with the legislation.

Furthermore, in the interpretation of life, Francis Carolie says that, the right to life entails the ability to live in dignity and to participate in all aspects of daily life. The judiciary appears to take a more expansive stance on Article 5(1)'s interpretation of life. Referring to the case of [Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor \[1996\]](#), the plaintiff, a primary school senior assistant, was taken into custody and charged with two counts of criminal breach of trust by a public worker in accordance with Section 409 of the Penal Code, receiving 6 months in detention. He filed a High Court appeal wherein High Court permitted him to form a good bond behaviour for RM5,000 without providing guarantees for three years. He was fired by the Education Service Commission (ESC) since "the conviction" damaged the reputation of the service standing in public service. In court of appeal, article 5(1) uses the term "life" to mean more than just existing. It includes every aspect that is fundamental to life itself as well as those things that contribute to life quality.

In this context, it includes the right to stay in the public sector, susceptible to termination for good reason by using an equitable process.

4.2. Mandatory Vaccination: Does It Infringe Human Rights Principle and Fundamental Liberties Incorporated in Article 5 (1): An analysis

Prior to delving into the evaluation of fundamental liberties with regard to mandatory vaccinations, it is imperative to make reference to the ruling of the United States Supreme Court in the case of [Jacobson v. Massachusetts \[1905\]](#). Notwithstanding the legal mandate, Jacobson, a Swedish immigrant, declined to receive immunisations for himself and his kid due to an adverse prior experience with the process. The Supreme Court, with a majority of 7-2, determined that compulsory vaccinations did not violate the constitutional right to liberty as outlined in the US Federal Constitution. The Supreme Court adopted a collectivist stance by permitting public health to take precedence over individual freedom, as long as the enforced restrictions do not exceed what is reasonably necessary. The Court further explained that, 'real liberty for all could not exist under the operation of a principle which recognizes the right of each individual person to use his own (liberty), whether in respect of his person or his property, regardless of the injury that may be done to others'. The Court emphasises that the law was a legitimate exercise of the state's police power to protect the public health and safety of its citizens ([Gostin, 2005](#)). Local boards of health determined when mandatory vaccinations were needed, thus making the requirement neither unreasonable nor arbitrarily imposed ([Jacobson v. Massachusetts 1905](#)).

Malaysia follows the common law system, unlike the United States. "No person shall be deprived of his life or personal liberty except according to a procedure established by law," states Article 21 of India's Constitution, echoing Malaysia's legal system. It is possible to dissect Article 21 into its component components as follows, (1) No one shall be deprived of his life, (2) No one shall be deprived of his personal liberty and (3) A person can be deprived of both his life and liberty according to a procedure established by law. Article 5(1) of the Federal Constitution is in *pari materia* with the provision cited above, as 'no person shall be deprived of (their) (i) life or (ii) personal liberty (iii) save in accordance with law'. The right to life seems to mean exactly that at first look. Unfortunately, there are no cases yet in Malaysia on whether the right to life and/or personal liberty covers the right to health. In the context of this article, it is arguable whether the right to be vaccinated against COVID-19 or otherwise is a guaranteed fundamental liberty under Article 5 of the Federal Constitution.

But, as was most notably demonstrated in [Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor \[1996\]](#), courts in Malaysia have traditionally adopted a liberal view of life. A person has the right to "lawful and gainful employment," "to live in a reasonably healthy and pollution-free environment," and "to receive the benefits that our society has to offer," according to the Court of Appeal's definition of life. The Court went on to say that it "does not refer to mere existence" when defining life in the Constitution. It includes everything that makes life worth living and everything that is essential to life itself.

But does the right to health fall under this right to life?. [State of Punjab v. Mohinder Singh Chawla \(1997\)](#) is an appropriate Indian case to cite since no similar cases have been decided in Malaysia. This case solidified the idea that access to healthcare is a fundamental human right and that it is the responsibility of the state to ensure that its citizens have access to adequate medical care. In the case of [Majlis Agama Islam Wilayah Persekutuan v](#)

Victoria Jayaseele Martin & Another Appeal [2016] delves deeply into the topic of personal liberty. Referring to 'the person or body of the individual,' the Federal Court in this instance followed the result in *Government of Malaysia & Ors v Loh Wai Kong [1979]* and held that personal liberty cannot be interpreted as liberty simply. Therefore, rights like the freedom to travel do not constitute personal liberty. Because immunisations improve health, both personally and collectively, we affirm that mandatory vaccination programmes do not violate part (i) of Article 5(1).

This being the case, the question of whether the rights conferred by parts (i) and (ii) of Article 5 can be subjected to the law requires a more thorough examination of part (iii) (1). But, does the federal constitution allow for mandatory vaccination? Before we get into this part, it's important to understand that federal constitutional is a fundamental principle of Malaysia. Article 4(1) makes it very clear that the Constitution is "the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void".

Putting it into a perspective, section 46A (1) of Act 166, prohibits any sitting member of Parliament from being a member of the Bar Council or a Bar Committee; the plaintiff in *Sivarasa Rasiah v Badan Peguam Malaysia & Anor [2010]* argued that this provision violated Article 5(1). According to the Federal Court, "in accordance with law" means a legislation "that is fair and just" and not just any law that has been passed, regardless of how unfair or arbitrary it is. So long as it does not lead to undue discrimination, as the courts have understood it, Parliament can pass laws that might violate fundamental liberties.

In India, there are statutes that mandate vaccinations (*Lahariya, 2014*). During the British Colonial era, two acts were passed which were the Vaccination Act of 1880 and the Epidemic Diseases Act of 1897 to combat the smallpox outbreak. The former is no longer in effect, but the latter does include vaccine requirements that provide states the authority to "take whatever measures [it] thinks are necessary to prevent the outbreak of such disease or the spread thereof," including the possibility of obligatory vaccination programmes.

Likewise, Malaysia has a provision like this. The Prevention and Control of Infectious Diseases Act 1988 ('PCID Act') grants the Minister of Health the authority to issue an order designating any area as an "infected local area" under Section 11(1). In Section 11(3) therefore establishes the legal authority of an "authorised officer" to lawfully direct any "person or class or category of persons" living in said infected local area by an 'authorised officer'. The authorised officer is responsible for prescribing any measures deemed essential for disease control, including but not confined to treatment, vaccination, isolation, and observation. As stated in Section 2 of the PCID Act, "any Medical Officer of Health, any health inspector, or any officer appointed by the Minister" is considered an authorised officer. This definition has expanded the power to appoint 'authorised officers' under the Emergency (Essential Powers) Ordinance 2021 to the Yang di-Pertuan Agong (YDPA) or any person authorised by the YDPA. Despite the end of the state of emergency on August 1, 2021, the Ordinance will not be repealed until six months have passed, in accordance with Article 150(7) of the Constitution. In light of the current COVID-19 epidemic, the Ministry of Health has every right to declare Malaysia an infected local area and order all citizens to get the vaccine. Given that all citizens should have equal access to a scientifically proved public good, we also believe that this kind of executive action does not violate the Constitution as well as upholding the human rights.

Every individual possesses an inherent entitlement to fundamental human rights, irrespective of their gender, race, religion, or any other determining factor. Bentham, in his theory highlighted the moral obligation to safeguard the fundamental rights of others, including their life and liberty ([Baujard, 2013](#)). These include the liberation from slavery, the right to life and liberty, the right to free speech and others. These essential rights, which safeguard every individual, are considered to be applicable to independent persons. This is in contrast to the concept of "privilege" during the Middle Ages, which resembled the one-drop rule that was extensively employed in the United States. The phrase "human rights" appears seven times in the United Nations Charter, which established the Universal Declaration of Human Rights (UDHR) and declared the preservation of human rights as the organization's guiding principle. Furthermore, as stated in Articles 22 and 25 of the Universal Declaration of Human Rights, countries can safeguard the rights of their citizens by ensuring that each person has access to adequate resources. This measure emphasises the significance of having a good and healthy standard of living within society.

The assumption that human rights have a threshold weight against community aims and cannot be surrendered because of utilitarian calculations of broad public interest is one of the ideas of human rights from political discourse ([Faruqui, 2008](#)). While human rights are protected and the consequences of violating the constitution are acknowledged by both international and national laws, certain of these rights are not reserved for any one person. Notwithstanding the UDHR's empowerment of the person as an independent being, these liberties and rights are not unqualified. There are a number of ethical concerns that surround both the requirement of vaccines and the refusal to get them. The issue is whether the public interest should take precedence over individual rights or the other way around. The best way to boost herd immunity and lessen the chance that an epidemic would enter and spread throughout the nation is often through immunisation and vaccination is one of the options ([World Health Organization, 2020](#)).

However, as part of their investments in the infrastructure and services related to public health, industrialised and some emerging nations will benefit from this strategy. Many non-developing nations might not find this to be cost-effective. In 2019, [Giubilini et al., \(2021\)](#) put up three primary moral duties regarding immunisation. First and foremost, it promotes a shared communal obligation to attain herd immunity and protects everyone from infectious illnesses that may be prevented by vaccination. Second, vaccination is required for both individuals and the general public, with the exception of those who are intolerant to specific vaccine ingredients. Finally, it is the duty of every community member to advocate for immunisation laws that are effective. It may be argued that there is no such thing as a right to reject vaccination since no one has the right to injure others by refusing vaccinations and to put society at risk by jeopardising herd immunity. Consequently, vaccination requirements are needed in order to safeguard against possible victims of compromised herd immunity ([Flanigan, 2014](#)).

Malaysia's Federal Constitution guarantees the preservation of fundamental human rights. Acts and laws on matters that either have a human rights component or relate to certain sections of society whose rights may be infringed contain legislative provisions that exist to prevent human rights breaches and abuses at the national level ([Human Rights Commission of Malaysia \[SUHAKAM\], 2023](#)). However, other values are also important for human rights legislation rather than fundamental liberties according to western countries. Since 1948, the United Nations International Covenant of Economic, Social, and Cultural Rights (ICESCR), a convention adopted by 171 countries including all

of Europe and the United Kingdom, has established economic and social rights to health, employment, and education. This is the most complete recognition in international law. In its 2013 Global Vaccine Action Plan, the WHO stated that vaccination "is and should be recognised as a core component of the human right to health and an individual, community, and governmental responsibility." A similar viewpoint was acknowledged in the ICESCR's article 12(c), which enumerates among the duties imposed by the right to health is "the prevention, treatment, and control of epidemic diseases" (King et al., 2021). Thus, there is no reason to believe that laws requiring vaccinations are intrinsically incompatible with human rights principles.

5. Conclusion

It can be encapsulated that mandatory COVID-19 vaccination does not constitute transgression on their fundamental human rights, and is consistent with the principles of preservation of public order in order to promote herd immunity and to control vaccine preventable disease outbreaks in Malaysia. The court in *Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] went on to say that it "does not refer to mere existence" when defining life in the Constitution. It includes everything that makes life worth living and everything that is essential to life itself which refers to vaccination in this context.

Ethics Approval and Consent to Participate

The researchers used the research ethics provided by the Research Ethics Committee (REC) and Researchers Guidelines (Revision 2022 Ver. 2) of Universiti Teknologi Mara. All procedures performed in this study involving human participants were conducted in accordance with the ethical standards of the institutional research committee.

Acknowledgement

No acknowledgement.

Funding

This study received no funding.

Conflict of Interest

The authors reported no conflicts of interest for this work and declare that there is no potential conflict of interest with respect to the research, authorship, or publication of this article.

References

- Abdul Shukor, S. F., Mustafa Khan, N. J., & Ghazali, F. (2021). Compulsory vaccination for children: Violation of human rights? *UUM Journal of Legal Studies*, 12(2), 115–130.
- Aldajani, F. N., & Aldosari, M. (2023). Pharmacist-led vaccination services in the Middle East. *Journal of Pharmaceutical Policy and Practice*, 16(1), 171.

- Baujard, A. (2013). Utilitarianism and anti-utilitarianism. *HAL-SHS - Sciences de l'Homme et de la Société*. <https://halshs.archives-ouvertes.fr/halshs-00906899>
- Bor, A., Jørgensen, F., & Petersen, M. B. (2023). Discriminatory attitudes against unvaccinated people during the pandemic. *Nature*, 613(7945), 704–711.
- Cheng, F. K. (2022). Debate on mandatory COVID-19 vaccination. *Ethics, Medicine and Public Health*, 21, 100761.
- CodeBlue. (2020, November 19). The new national immunisation schedule. *CodeBlue*. Retrieved December 11, 2023, from <https://codeblue.galencentre.org/2020/11/19/the-new-national-immunisation-schedule/>
- Das, C. V. (2002). 'Life' under Article 5: What should it be? *The Journal of the Malaysian Bar*, XXXI(4), 68–81.
- Faruqui, S. S. (2008). *Document of destiny: The Constitution of the Federation of Malaysia*. Star Publications (Malaysia).
- Fisman, D. N., Amoako, A., & Tuite, A. R. (2022). Impact of population mixing between vaccinated and unvaccinated subpopulations on infectious disease dynamics: Implications for SARS-CoV-2 transmission. *CMAJ: Canadian Medical Association Journal*, 194(16), E573
- Flanigan, J. (2014). *A defense of compulsory vaccination*. PhilPapers: Online Research in Philosophy. <https://philpapers.org/rec/FLAADO>
- Giubilini, A., Savulescu, J., & Danchin, M. (2021). Global ethical considerations regarding mandatory vaccination in children. *The Journal of Pediatrics*, 231, 10–16.
- Gostin, L. O. (2005). Jacobson v Massachusetts at 100 years: Police power and civil liberties in tension. *American Journal of Public Health*, 95(4), 576–581.
- Government of Malaysia & Ors v Loh Wai Kong* [1979] 2 MLJ 33
- Higgins, R. (1973). The right in international law of an individual to enter, stay in and leave a country. *International Affairs (Royal Institute of International Affairs 1944-)*, 49(3), 341–357.
- Hong Leong Equipment Sdn Bhd v Liew Fook Chuan* [1996] 1 MLJ 481
- Human Rights Commission of Malaysia (SUHAKAM). (2023). *Responses to OHCHR questionnaire on UN Human Rights Office*. OHCHR. https://www.ohchr.org/sites/default/files/Documents/Issues/IntLaw/PreventionStudy/NHRI/Human_Rights_Commission_Malaysia.pdf
- Immunise4Life. (2023). *The Malaysian National Immunisation Programme (NIP)*. Immunise4Life. Retrieved December 12, 2023, from <https://immunise4life.my/the-malaysian-national-immunisation-programme-nip/>
- Jacobson v Massachusetts* [1905] 197 U.S. 11
- Jafar, A., Dambul, R., Dollah, R., Sakke, N., Mapa, M.T., Joko, E.P. (2022). COVID-19 vaccine hesitancy in Malaysia: Exploring factors and identifying highly vulnerable groups. *PLoS ONE*, 17(7), e0270868. <https://doi.org/10.1371/journal.pone.0270868>
- King, P. J. (2022). Legal, constitutional, and ethical principles for mandatory vaccination requirements for COVID-19. *Lex*, 10(2), 123–145.
- King, T. J., Ferraz, O. L. M., & Jones, A. (2021). *Mandatory COVID-19 vaccination and human rights*. *PubMed Central (PMC)*. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8700276/>
- Lahariya, C. (2014). A brief history of vaccines & vaccination in India. *The Indian Journal of Medical Research*, 139, 491–511.
- Lenaerts, K., Nuffel, P.V. & Bray, R. (2010). *Constitutional Law of the European Union*. London: Sweet and Maxwell.
- Loh Wai Kong v Government of Malaysia & Ors* [1979] 2 MLJ 33

- Majlis Agama Islam Wilayah Persekutuan v Victoria Jayaseele Martin & Another Appeal* [2016] 1 LNS 131
- Mantovani A., & Santoni A. (2018). Mandatory vaccination in Italy: Time for engagement of immunologists. *European Journal of Immunology*, 48, 12–14
- National Pharmaceutical Regulatory Agency (NPRA). (2023). Introduction - National Pharmaceutical Regulatory Agency (NPRA). https://www.npra.gov.my/easyarticles/images/users/1066/AEFI%20Summary/COVID-19-Vaccines_AEFI-Summary-Report-data-as-of-20211231.pdf
- Olomjobi, Y. (2017, November 1). *Right to personal liberty in Nigeria*. SSRN. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3062580
- Pihak Berkuasa Negeri Sabah v Sugumar Balakrishnan & Another* (2002) 4 CLJ 105
- Sivarasa Rasiah v Badan Peguam Malaysia & Anor* [2010] 2 MLJ 333
- Smith, M. J., & Emanuel, E. J. (2023). Learning from five bad arguments against mandatory vaccination. *Vaccine*, 41(21), 3301–3304.
- State of Punjab v. Mohinder Singh Chawla* (AIR 1997 SC 1225)
- Sugumar Balakrishnan v Pengarah Imigresen Negeri Sabah* [1998] 3 MLJ 289
- Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Anor* [1996] 1 MLJ 261
- Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidik & Anor* [1996] 2 CLJ 771
- Taylor, B., Miller, E., Lingam, R., Andrews, N., Simmons, A., & Stowe, J. (2002). Measles, mumps, and rubella vaccination and bowel problems or developmental regression in children with autism: A population study. *BMJ*, 324(7334), 393–396.
- Taylor, L. E., Swerdfeger, A. L., & Eslick, G. D. (2014). Vaccines are not associated with autism: An evidence-based meta-analysis of case-control and cohort studies. *Vaccine*, 32(29), 3623–3629.
- Tengku Muhammad Fakhrudin, T. M. F., Aminnuddin, M., & Shafei, M. N. (2023). Knowledge of the Malaysian National Immunisation Programme and its associated factors among parents in Dungun, Terengganu: A cross-sectional study. *Malaysian Family Physician: The Official Journal of the Academy of Family Physicians of Malaysia*. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC10038154/>
- The Editors of *Women's Health*, & Talbert, S. (2023, October 13). *10 flu shot side effects you should know about—and why they shouldn't stop you from getting it*. *Women's Health*. <https://www.womenshealthmag.com/health/a18708943/flu-shot-side-effects/>
- Wakefield, A. J., Murch, S. H., Anthony, A., Linnell, J., Casson, D. M., Malik, M., & Walker-Smith, J. A. (1998). Ileal-lymphoid-nodular hyperplasia, non-specific colitis, and pervasive developmental disorder in children. *The Lancet*, 351(9103), 637–641.
- World Health Organization. (2020, December 31). *Coronavirus disease (COVID-19): Herd immunity, lockdowns and COVID-19*. World Health Organization. <https://www.who.int/news-room/questions-and-answers/item/herd-immunity-lockdowns-and-covid-19>
- World Health Organization. (2022). *COVID-19 and mandatory vaccination: Ethical considerations*. World Health Organization. <https://www.who.int/publications/i/item/WHO-2019-nCoV-Policy-brief-Mandatory-vaccination-2022.1>
- World Health Organization. (n.d.). *Coronavirus disease (COVID-19): Vaccines and vaccine safety*. Retrieved December 12, 2023, from [https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-\(COVID-19\)-vaccines](https://www.who.int/news-room/questions-and-answers/item/coronavirus-disease-(COVID-19)-vaccines)