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COMPULSORY VACCINATION OF COVID-19: A DILEMMA BETWEEN ENSURING PUBLIC HEALTH AND RESPECTING INDIVIDUAL FREEDOM

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ABSTRACT

In recent years, due to the COVID-19 pandemic, the world has suffered and undergone a radical transformation. At the beginning of 2020, the world was at the mercy of the COVID-19 pandemic. However, a ray of hope shone upon the world with the development of COVID-19 vaccination. Even though everyone needs to get vaccinated, it prompts a question about whether people can be forced to get vaccinated or if they should be able to choose for themselves. A welfare state must protect its citizens' health. Despite this, citizens have reasons to be vaccinated against the virus. This paper discusses the abovementioned issue by analyzing judicial decisions, international legal instruments and contemporary data on pandemic situations. This study aimed to address the dilemma of mandatory vaccination and the independence of those who choose to vaccinate. The study revealed that a state

can impose mandatory vaccination in certain situations, subject to legal and practical constraints. In contrast, individual freedom is always respected because human rights are vested in international and domestic law. While enforcing vaccination policies, an equitable balance between an authoritarian measure to protect public health and granting an exception to specific individuals, as well as honouring human rights, is the paramount approach.

Keywords: COVID-19, compulsory vaccination, private rights, public health.

INTRODUCTION

COVID-19 has been with us for approximately two years. From December 2019 to mid-2021, the world underwent a drastic revolution. The world has found hope after the development of COVID-19 vaccines last year. However, because of the second and third waves of COVID-19, people have suffered again, even with vaccination protection. Although scientists have managed to develop COVID-19, implementing vaccine policies is complicated. States must ensure the safety of their citizens' health and lives. Therefore, ensuring that COVID-19 vaccines reach all citizens is an obedient task. Due to the anti-vaccination movement, side effects of vaccination, religious beliefs, and personal hesitation, some citizens are reluctant to take vaccines. This effect has instigated the question of whether states should mandate COVID-19 vaccines for all citizens or not. The law provides protection and freedom to an individual. Implementing mandatory vaccination curtails individuals' freedom, creating a diverse situation between the state's obligation to protect public health and private rights. This paper will address the state's obligations to public health, the implementation of COVID-19 vaccination, and individual choices on whether to take vaccination or not. This study examined judicial decisions and international legal instruments to shed light on the ambiguity surrounding the implementation of mandatory vaccination.

METHODOLOGY

This study uses a doctrinal research approach. This study adopts qualitative research and exclusively adheres to library-based legal discussions. This paper relies upon international human rights law,

legal instruments, and judicial decisions to address and analyze this issue. The study was strengthened with secondary sources such as journals, websites, and newspaper articles. Newspaper articles are vital because they contain information regarding the pandemic. This paper is theoretical, exploratory, and analytical. For its verdict, the study examines Article 8 of the European Convention on Human Rights (ECHR) and how the pandemic is going right now.

DISCUSSION

The discussion of this paper is categorized into several parts. This paper will first review the concept of compulsory vaccination, the necessity of mandatory vaccination, herd immunity, and public health protection. The middle section addresses vaccine hesitancy and its causes, and the final section confers individual rights and legal instruments. Judgments will be presented on every part to deliver the analysis. The outcome demonstrated that a statement cannot directly impose mandatory vaccination. A state can take measures for a certain period on a limited scale. In addition, a private institution can compel its employees to undergo vaccination. However, some exceptions are granted to individuals who cannot receive vaccinations because of side effects.

Compulsory Vaccination

In this section, the paper will discuss compulsory vaccination: its definition, origins, whether it is applicable during a coronavirus pandemic, and to what extent it is practical. According to the World Health Organisation, “Vaccination is a simple, safe, and effective way of protecting people against harmful diseases before they come into contact with them.” (Vaccines and Immunization: What Is Vaccination? 2020) Vaccination helps the human body develop resistance to particular infections. Thus, vaccination is presumed to protect humans from harmful, life-threatening diseases. In previous years, the vaccination policy was seen to come when life-threatening diseases, for example, polio, tetanus, influenza, rubella, hepatitis B, and hepatitis A. This blessing cured all these life-threatening diseases using vaccines. In all of the abovementioned situations, states play notable roles in the distribution of vaccines. Without the proper distribution of vaccines, reducing the risk would not have been possible.

Vaccination can be administered either voluntarily or compulsorily. During voluntary vaccination, people are not obliged to be vaccinated; instead, they can be vaccinated at their own will. Unfortunately, even after several successful trials, people still doubt vaccination. As a result, the tendency of vaccine refusal is increasing, which is marked by the World Health Organization as one of the top ten global health problems (Yildirim, 2020). Due to this tendency, states adopt compulsory vaccination policies whereby some conditional approach is taken, such as making vaccines a pre-condition to receiving public service. Therefore, under this policy, people are not vaccinated forcefully but use vaccination to get some benefits, and it is imposed on some portion of the population to tackle the mass spread of the disease. As previously mentioned, vaccination policy is one of the state's responsibilities to keep citizens safe. During an epidemic, states may implement strict policies to prevent a disease from spreading widely. For example, without vaccination, no student can participate in class; without vaccination, no one can go to the office or public places (Howard, 2021). States take a deviant approach and create negative consequences if citizens do not follow the rules (Krasser, 2021). This drastic approach is called a compulsory vaccination policy (Flanigan, 2013). However, this type of policy does not mean that every citizen has to be vaccinated; rather, it is imposed on a certain number of people to avoid an epidemic of a disease or to keep the spread of the disease at bay (Chemerinsky, 2016).

Another illustration, the 'Smallpox Vaccination Law', was made compulsory in 1853, and later, for non-compliance with the law, fines were levied (Amin et al., 2012). This was done to prevent the smallpox epidemic, one of human history's most devastating diseases (Fenner et al., 1988). In the United States, Massachusetts was the first state to enforce compulsory vaccination against smallpox in 1809 (Fenner et al., 1988). The law demanded that people get the vaccination, especially children. Without smallpox vaccination, children could not be admitted to school (Fenner et al., 1988). However, in 1905, the Apex Court of the United States upheld *Jacobson v. Massachusetts* that individual rights can be restricted if there is a public good at large (Mari, 2005). Because vaccination of mass populations could stop the smallpox epidemic in the United States, the states were authorised to make compulsory vaccination laws. As a result, states in the United States have passed compulsory vaccination laws (Walkinshaw, 2011).

Additionally, in 1922, in *Zucht v. King*, the Supreme Court of the U.S. again upheld the same decision (Walkinshaw, 2011). Thus, the purpose of compulsory vaccination is to protect people from disease and, at the same time, to prevent the outbreak of that disease. Because many people have opinions, the state has taken firm steps to fight the disease. Sometimes, based on the situation, these steps are made mandatory for the people so that the state's inhabitants strongly follow the guidelines. This is how the state's initiatives on compulsory vaccination safeguard its citizens' work. In the next chapter, the paper will discuss whether compulsory vaccination is justified and to what extent the government can impose mandatory vaccination on a citizen. For vaccines, reducing the risk would not have been possible.

Although the recent data on COVID-19 represents a satisfactory situation, this situation still needs to erase the possibility of COVID-19 rising. It should be mentioned that the COVID-19 situation in Malaysia was under control until the end of January 2021, but suddenly, an unpredictable rise in COVID-19 cases was observed in February 2021. Malaysia and the rest of the world are treating COVID-19 as a sudden and unpredictable threat and are preparing to live with it. Even the World Health Organization cannot predict when this outbreak will end or will ever be over. Because no medicine has been invented to cure this disease, precautions are the only weapon to prevent this outbreak. Therefore, from a more significant picture point of view, Malaysia may decide to require vaccinations in the future to protect public health, regardless of the current situation. In this regard, mandatory vaccination is required to secure public health. However, the later portion of this paper will discuss how the policy can be described in light of Malaysian law and notable case judgments relating to this matter.

Compulsory Vaccination for Public Health

Prior judicial decisions favouring mandatory vaccination laws prioritized the public good over individual rights. However, due to the flow of time, individual rights were strengthened. New laws provided more protection to citizens and made states realize they had to take a coherent approach so that a state could protect its citizens in the event of an epidemic and ensure an individual right not to be harmed by legal enforcement. This study noted that whether or not a state should compel citizens to vaccinate depends on the pandemic situation.

In a recent case, *Vavricka v. Czech Republic*, the Grand Chamber of the European Court of Human Rights rejected the applicant's plea and held that compulsory vaccination is required and non-compliance with the law will be levied a fine as per the state rule. The case started with children vaccinating children, and the parents were fined because the children were not vaccinated against the diseases. The Court analysed various points. According to the Grand Chamber, the state was responsible for protecting children, and a vaccination policy was created to safeguard children's health from diseases (*Vavricka v. Czech Republic*, paras. 132 and 287). Vaccination at an early age creates immunity in children (*Vavricka v. Czech Republic*, paras 285, 286). However, sometimes voluntary vaccination is not sufficient to obtain a certain level of herd immunity (*Vavricka v. Czech Republic*, para 293). Hence, compulsory vaccination. In addition, the Chamber envisioned that compulsory vaccination must be indirectly imposed, and precautions and scientific data on the effectiveness of vaccination must be evaluated before the start of the vaccination policy (*Vavricka v. Czech Republic*, paras. 306 and 307). In the end, public protection was prioritised, and the state was responsible for protecting its citizens' health.

Herd Immunity

Another aspect of compulsory vaccination is herd immunity. It is at a stage where the virus will not transmit to vaccinate people. Some people cannot take vaccines because of vaccine guidelines. A good example is children (*The Pfizer COVID-19 Vaccine: What You Should Know*, 2021). To protect children, adults must also receive vaccinations; otherwise, the virus can spread from unvaccinated adults to children. The COVID-19 vaccine does not provide complete immunity against the virus (Lipsitch & Dean, 2020). According to vaccine manufacturers, the COVID-19 vaccine works around sixty percent of the time but not a full hundred percent. It works approximately 75 – 90 percent of the time with two vaccine shots (Sky News, 2021). States with higher vaccination rates experienced significantly decreased infection rates within months (Ritchie, 2020). Despite a vaccination rate of more than 60 percent in the United Kingdom, infection rates rose again (Sky News, 2021).

The reason is that vaccines are less effective against the delta variant of the virus. Sky News also showed that the protection rate is around

80 percent, even with two shots of vaccines. Vaccinated individuals are responsible for 20 percent of virus transmission. The United States also sees the same situation (Al Jazeera, 2021). Simultaneously, the virus can spread to unvaccinated people (Rushe & Ho, 2021). A compulsory vaccination law or policy must ensure the safety of society. If the choice is given to people, they might not be willing to take the vaccines. As a result, the COVID-19 infection rate may rise again. The purpose of the vaccine was to create immunity and reduce virus transmission. Without herd immunity, society cannot return to normal. For example, legal restrictions regarding COVID-19 are lifted in England, whereas in Wales and Scotland, the restrictions are not (Morton, 2021). This indicates that the government will not take measures to return to the normal situation if a specific vaccination rate is not met (COVID-19 Response-Spring 2021 (Summary), 2021).

Additionally, the vaccine reduces the chance of hospitalization, which means that people might get COVID-19 but will not create a situation where they must go to the hospital (Smout & James, 2021). Even though states are cooperating and manufacturing vaccines continuously, COVID-19 has variants. As aforementioned, some states are facing the third wave of COVID-19. From this perspective, mandatory vaccination can protect public health and improve everyday life after the COVID-19 pandemic. Hence, with proper herd immunity, the infection rates will be reduced. For instance, Israel and the UK might achieve herd immunity (Schraer, 2021). With the state enforcing compulsory vaccinations, it is easier to achieve herd immunity. With the state enforcing compulsory vaccinations, it is easier to achieve herd immunity.

Implementing Mandatory Vaccination

After a year of coronavirus pandemics, scientists created a COVID-19 vaccine. Many governments have taken steps to get their citizens vaccinated to prevent further virus spread. The second wave of COVID-19 made governments more active regarding vaccination policies. The question then arises whether the government can make vaccination mandatory for citizens. Because of anti-vaccination movements, religious beliefs, or one's preference, no citizen might take the vaccination. Most vaccines administered to people have been developed over the years, and many tests and waves of vaccine application exist. However, COVID-19 vaccination is new, and only

a year has passed since its development. In this regard, states must protect citizens and ensure vaccination policies are necessary. People are reluctant to take vaccines because of a lack of trust in vaccination. As seen in *Vavricka v Czech Republic*, states cannot directly impose compulsory vaccination upon their citizens, and they cannot ignore the dangerous virus that threatens the lives of their citizens. In this part of the paper, the analysis will be inked in black and white concerning some judicial decisions and legal instruments.

Several petitions have been appealed before the Court of Law regarding compulsory vaccination. Most of the time, the petitioners argued that their private lives had been violated because of compulsory vaccinations. All issues were gathered around whether individual rights would prevail. Judicial decisions are enumerated in this section.

In a Turkish case, the petitioner filed a suit regarding compulsory vaccination and argued that the vaccination violated her right to privacy (Yildirim, 2020). Furthermore, the appellants refused compulsory vaccination for their children, claiming that the government lacks legislation to enforce compulsory vaccination (Yildirim, 2020). The Turkish Court stated that some interference might occur if it is prescribed by law (Yildirim, 2020). Compulsory vaccination must be balanced between individual and public interests. The law that permits compulsory vaccination must respect privacy rights (Yildirim, 2020). The Turkish Court observed that vaccination protects public health. However, the quality of the law that regulates vaccination must be high. This means that it must be a bad law. A law can be a bad law that does not respect the people's will or morality. The law must specify how much interference is permitted in administering vaccination and how much pressure can be applied to an individual to take vaccination.

In the case of *Solomakhin v. Ukraine*, where the appellant was a hospital patient diagnosed with diphtheria, some vaccinations were given to him without his consent in several phases. The appellant filed a suit regarding this matter (*Solomakhin v. Ukraine*, para 14). The Court analysed that the appellant failed to prove that his private life was interfered with or his health was damaged under Article 8 and Article 2 of the ECHR. The Court observed that the appellant did not object to the vaccination even though it was administered several times, and his health deterioration was not linked to the vaccines given to him (*Solomakhin v. Ukraine*, paras. 28, 38, 39). This case found

that the pleadings were partially inadmissible and that there was no proven evidence that the vaccines damaged the appellant's health or that his private life was obstructed. The appellant was not forced to take the vaccines and was in a state to firmly refuse the vaccines. In both cases, the court did not find any substantial evidence that vaccines directly hamper the lives of the appellants. Vaccines have side effects that are often mentioned while taking the vaccinations. The side effects of vaccines do not pose a threat to the human body but temporarily relieve symptoms.

For example, Australia has a COVID-19 vaccination strategy (Maguire et al., 2020). According to this policy, the Australian government cannot enforce forced vaccination. However, it can make policies such as vaccination passports, business people requiring vaccination before travel, or employees needing to get it before they can return to work. Many states adopted these types of policies during the COVID-19 pandemic. Based on individual rights, those rights can sometimes be limited if public health needs protection. Therefore, COVID-19 vaccination is restricted, and because public health is in danger, the government can adopt negative consequences if an individual receives the vaccination. Furthermore, the World Health Organization states that public health protection, economic and social disruption reduction, and human rights respect must be balanced (Maguire et al., 2020). The problem is balancing human rights and strict laws to safeguard public lives. COVID-19 has had several waves, and the third wave is currently underway (Huq, 2021). This creates a complicated situation in which governments must create a balance.

Effectuating Compulsory Vaccination in Malaysia

Vaccination is the only widely accepted medicine for preventing the COVID-19 outbreak. Countries worldwide have taken up the challenge of vaccinating their entire population as early as possible. Otherwise, COVID-19 may outstretch the world again. Like other countries, Malaysia has the same challenge of vaccinating the whole population. It was reported in mid-February 2022 that 98 percent of the adult population and 89 percent of the adolescents in Malaysia are fully vaccinated (Wong & Lee, 2021). Because almost 90 percent of the population has already been vaccinated, the rest can also be brought under the vaccination program. However, only 30 percent of children have been reported as vaccinated as of mid-May 2022, and

a significant portion is yet to be vaccinated (Ng et al., 2022). The main challenge is getting the rest of the population to participate in the vaccination program (Wong et al., 2020).

Moreover, in Malaysia, no law requires employers to vaccinate workers before entering or starting work (Wong & Lee, 2021). In the lack of a legislative right or duty, the issue is whether an employer may require workers to get vaccinated before starting work. Common law requires businesses to offer a safe workplace (Ab. Khalil, 2021). Employers must also create and administer COVID-19 immunization programs for their workforces. No instances have been documented in Malaysia on this topic. However, New Zealand cases may help. In *Department of Labour v Idea Services Ltd*, an employer was penalized for failing to make ‘practicable efforts to guarantee the safety of workers while at work’. One of its workers acquired Hepatitis B during employment. The Court concluded that the employer could not require its workers to undergo immunization and that as long as the company told its employees of the opportunity for medical screening, the business had met its statutory duty. In *Worksafe New Zealand v Rentokil Initial Ltd*, the employer demanded pre-employment Hepatitis B testing. If an applicant were not immune to Hepatitis B, the business would give a vaccine. In this instance, the company neglected to do a pre-employment screening on an employee despite his manager’s request. The employer did not provide Hepatitis B screening or vaccine. The worker was hospitalized with acute Hepatitis B. The employer pled guilty under Section 6 of the 1992 New Zealand Health and Safety and Employment Act. Section 1(1) of Malaysia’s Occupational Health and Safety Act 1994 (OSHA, 1994) puts an obligation on every employer to safeguard the safety, health, and welfare of its workers (Ab. Khalil, 2021).

In Malaysia, like in other nations, the well-being of citizens is a paramount concern. The Federal Constitution of Malaysia safeguards fundamental liberties, although it does not explicitly define the right to health. However, a legal precedent set by Justice Gopal Sri Ram in the case of *Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan* [1996] 1 MLJ 261 interpreted the Constitution’s Article 5 to include the notion of a ‘quality life’, which encompasses a secure livelihood. Article 5(1) encompasses various aspects of life essential for quality, and similar to international agreements like the ICCPR, the Constitution allows for necessary restrictions via enabling legislation

to protect public health. For instance, Article 9(2) permits restrictions on freedom of movement during public health crises. Ergo, as the citizen's right to life and liberty is restricted under Article 5(1) of the 1957 Constitution of Malaysia, the government is authorized to control the citizen's right to liberty (Haron et al.; M. A., 2023). Therefore, the government of Malaysia can adopt this indirect approach to mandatory vaccination, like Australia, which can easily find the rest of the unvaccinated population and accelerate the successful completion of the vaccination program (Abdullah et al., 2020). Article 9 serves as the legal basis for actions like lockdowns and quarantine orders, as demonstrated during the COVID-19 pandemic. The Prevention and Control of Infection Diseases Act 1988 also grants specific authority to the Minister of Health or authorized officers to address infectious disease outbreaks, including treatment and immunization. This legal framework underpins the National Immunization Programme (NIP), which aims to promote a healthy life through vaccinations. Despite ample clinical evidence supporting vaccination, some individuals remain hesitant (Haron et al., 2023).

Vaccine Hesitancy

The researchers identified five reasons behind vaccine hesitancy. This model is called "The 5C model of the drivers of vaccine hesitancy", also known as the 5Cs model (Machingaidze, 2021). Although this psychological model was designed before the first identification of COVID-19, this model is also appropriate behind the vaccine refusal of COVID-19 (Robson, 2021). Hence, this paper will discuss the arguments in favour of compulsory vaccination for COVID-19 in the light of the above-mentioned "5Cs Model" below.

Fear of Side Effects

People who are suffering from chronic diseases or other diseases think vaccination can cause a threat to their disease as well. Instead of protecting them from the danger of COVID-19, it may create a new disease in their bodies. Even in the case of Boffa and others, the European Commission of Human Rights ruled against the claim of the applicant that compulsory vaccination does not violate the "Right to Life." At this moment, the Court tried to determine the "real danger" to the applicant's child's life. In contrast, if this compulsory vaccination could not be enforced, it might endanger others' health (Boffa v. San

Marino, para 4). On the other hand, in *Solomakhin v. Ukraine*, the complainant alleged that the forceful administration of diphtheria vaccination leads to several chronic diseases (*Solomakhin v. Ukraine*, para. 33). Here, the European Court of Human Rights allowed any “proportionate interference” with the applicant’s body but ordered to keep the proper balance between this interference and the legitimate aim of the prevention of the spread of the disease (*Solomakhin v. Ukraine*, para. 35).

After this above discussion, the main issues that are drawn from this point are: a) are vaccines for COVID-19 causing any “Real Danger” to the health of the vaccinated, or b) is the compulsory vaccination procedure turning into an “Irrational Interference” of the body compared to the purpose of vaccination. It is true that, after every shot of the COVID-19 vaccine, the vaccinated face some mild and temporary side effects, which are the mere reaction of any vaccine. In addition, some experts have expressed concern about the severe effects of allergic reactions to the AstraZeneca vaccine. Furthermore, they advised anyone with a history of allergies to avoid vaccination (URN, 2021). In this regard, the World Health Organization recommended that interested clients inform the concerned medical officer or vaccination team about their history of allergic reactions (Clarification on the COVID-19 Vaccine Allergies, 2021). In addition, the WHO advised providing proper medical kits in the vaccination centre to address any immediate reaction; moreover, with the help of the country’s Ministry of Health, the WHO is monitoring all of the side effects caused by the vaccination (Clarification on the COVID-19 Vaccine Allergies, 2021). Above all, the World Health Organization verifies any vaccine after three phases of trials, and these vaccines get approval after “Successful Trials”. Therefore, these vaccines can be considered reliable and safe from this perspective.

Lack of Confidence

This pandemic has already taken 4.43 million lives worldwide. Apart from this, people are still trying to understand the comprehensive strategy taken for suppressing the transmission of COVID-19 (When and How to Use Masks, 2020). Thus, people have been practicing social distancing for more than two years. 2020; Sikali). Furthermore, we advise keeping a social distance from the generation that maintains a social life in both virtual and real life. Therefore,

this restriction detaches them from the real social world and makes them more dependent on the virtual one. As a result, day by day, this social distancing theory is becoming intolerable. So, now, people do not want to save their lives but rather get relief from the strategy of social distance.

Longer Lockdown

Another reason for vaccine resistance is that the infection rate in some areas is lower than the national average or lower than that of the rest of the country. Extended lockdown, which impacts people's livelihoods, is a more severe matter for the community (Elgueta, 2021). In Australia, an anti-lockdown protest was held in July. According to the protestors, the extended lockdown and harsh lockdown for a few cases in those areas affected people's daily lives (Elgueta, 2021). Job holders can work from home, whereas business owners have faced losses due to the harsh and extended lockdowns. Though WHO stated that the lockdown does not contradict human rights, it is seen that an extended lockdown gravely affects the livelihood of people (Elgueta, 2021).

Anti-vaccination Protest

Anti-vaccination protests are going around the world due to some controversies. People in Australia, France, Italy, and Greece are protesting against the vigorous measures of the governments (2021a). The adamant protestors are rallying in the streets with the mandatory Green Pass in the EU, vaccination approval of children, and restricting movement for unvaccinated people. In Australia, the lockdown is ongoing since around 12 percent of the population was vaccinated. As aforesaid, the lockdown is creating a hardship on business (2021a).

One of the reasons is the approval of vaccination for children aged twelve to eighteen. The Joint Committee on Vaccination and Immunization in the UK, also known as JCVI, protested the approval (Sun, 2021). Moderna and Pfizer approved the vaccination of the children. However, JCVI has yet to recommend it. The parents are concerned about their children regarding this COVID-19 vaccination. According to JCVI, the data on whether the children will be safe after vaccination is vague (Mason & Elgot, 2021). Though the UK politicians and medical officers recommended it, both parties are

in a tumultuous situation. JCVI wants more evidence regarding the matter and how to use the vaccine for the best of the children (Mason & Elgot, 2021). In Italy, the anti-vaccination movement took place after the compulsory introduction of the Green Pass/Health Pass (Castelfranco, 2021). Enjoying leisure activities or going to the park or shopping mall is required. People must refrain from dining at the restaurant. The Italian government has taken this rustic step to ensure public vaccination (Castelfranco, 2021). The protestors raise their voice as this infringes on individual freedom.

No vaccine can give 100 percent protection, including the COVID-19 vaccines. People want to get relief from this strategy of social distance after struggling for a long time. They want to be vaccinated but lead their lives as before the pandemic. On the other hand, even after getting vaccinated, experts suggest maintaining all the necessary health orders of WHO to suppress the transmission of this disease as before (Lovelace, 2021). So, when people find that they must maintain social distance after getting vaccinated, they lose interest and faith in the vaccines.

Private Rights

From the judicial decisions, one thing that stands out is the interference of mandatory vaccination in an individual's private life. Most of the appellants claimed that mandatory vaccinations interfered with their personal lives. According to their belief, they have a right to choose whether or not to take the vaccine. The writings in this section will be about international law and mandatory vaccinations. Since international law consists of various laws and there is no codified one law that can be considered international law, the paper will primarily focus on the ECHR. The right to private life and the right to life under Articles 2 and 8 of the ECHR are the most competent in protecting personal life.

Article 8

Article 8 gives protection to one's private life. The protection extends to family life, the home, and correspondence. No government without due cause can interfere with those rights. If any four rights, such as private life, family life, home, or correspondence, are obstructed, an individual can invoke Article 8. Rights under Article 8 are widened. In

Slivenko v. Latvia, the Court opined that the term “private life” under Article 8 includes “the network of personal, social, and economic relations” which have developed “since birth”. The Court elaborated on Article 8 in *C v. Belgium*. Private life includes professional and business relationships as well. From the judicial decisions, the ECtHR widened the parameters of Article 8 and emphasized protecting an individual’s private life.

At *locus standi*, as well as the merit of a case, it will be determined whether the above rights have been violated (Thym, 2008). In many judicial decisions, in the first instance, the Court investigated whether an appellant’s claims fell under Article 8 and whether those were violated. When the Court analyses a petition under Article 8, the first matter is whether the claim falls under Article 8 and to what extent the interference occurred. Interference is mandatory to claim a right under Article 8 (European Court of Human Rights, 2016). The interference must be arbitrary on the part of the state (*Libert v. France*, para 42). The law that interferes with the liberty of a person’s life needs to have an aim, purpose, and reasons as well. The restrictions mentioned in the law must be ‘foreseeable’ (*Silver and Others v. the United Kingdom*, para 87).

The usual grounds, such as national security, public health, and order, must be sorted out and clear to foresee the circumstances. Additionally, how much interference was needed, or the gravity of interference, is another pressing matter. In this regard, the balance of necessary interference and proportional interference is important (Thym, 2008). If the interference was for public health or sound, it could only be applied with a legitimate purpose as there was no way around it (*Boultif v. Switzerland*, para 48). Another primary part of the article is that the state can take measures according to the law of its state. While analysing the “interference,” the Court will look into the quality of the law. Accordingly, the land of law does not exempt the state or governmental authority.

The quality of law includes the rule of law and the “foreseeable” components of the law. The law also includes sub-laws, bylaws, rules, and regulations arising from the patent law. Next, the Court will weigh in on the purpose or aim, a legitimate aim of the law. A crime is not considered a law under the convention. For the rule of law to apply, equality must exist within national law (*Halford v.*

the United Kingdom, para. 49). Furthermore, the law must not be ambiguous or contain any ingredients that are not visible, difficult to apply, or prevent a person from accessing justice (Silver and Others v. the United Kingdom, para 87). The Act must be clear so that law enforcement agencies and citizens can understand the essence of the law, guidelines, and negatives for the violation of the law. Regarding COVID-19, the law of vaccination must be clear about the effects of vaccines, the negative consequences of vaccines, how much data is gathered, the penalty of non-vaccination, the exemption from vaccination, and the duties if vaccination is not taken. In *Vukota-Boji v. Switzerland*, the Court found a violation of Article 8 since the national law did not have enough clearance regarding the interference in private life.

However, there are some exemptions, such as if there is a question of national security or any prevention of crime or protecting moral health, the states can, according to the law of the land, restrain an individual from exercising Article 8. Nevertheless, the restraint cannot be arbitrary on the part of the governmental authority (*Libert v. France*, para 40, 42).

Article 2

A state can impose measures such as mandatory vaccination on its citizens to protect against the pandemic. Article 2 mentions the right to life and the protection of life. To invoke Article 2 of the ECHR, an applicant must show a connection between serious harm to health and compulsory vaccination. This article is relevant when it comes to the compulsory vaccination of children. Most of the cases lost their merit due to a lack of evidence. Though the applicants presented their petitions claiming the severe health hazard happened because of vaccination, the Court could not grant the merit of the cases (*Association X v the United Kingdom*, 1978). Additionally, the appellants knew the risk of the vaccination, and the applicants needed to take more measures to avoid the risk (*Osman v the United Kingdom*, 1994, para 31). In this part of the paper, we will discuss making kids get shots and Article 2.

Article 2 restrains the state from intentionally causing harm to anyone due to vaccination. Furthermore, the Article imposes a vested obligation on the state to consider and calculate the risks associated with

vaccination and enforce vaccination so that compulsory vaccination does not result in serious health harm to citizens (*Oneryildiz v Turkey*, 2004, para 89).

These obligations are divided into two ways. One is “positive obligations”, and the other is “negative obligations”. To elaborate, the state must protect the lives of its citizens, and at the same time, a state cannot take any intentional or unjust actions that are harmful to the lives of its citizens.

Among the positive obligations, a state must take measures regarding medical healthcare to safeguard its citizens. This also extends to any other acts of the state by which inhabitants’ lives might be jeopardised (*Centre for Legal Resources on behalf of Valentin Câmpeanu v. Romania*). In terms of medical healthcare, the states must monitor hospitals to ensure that the medical institution is up to standard and does not harm patients (*Vo v. France*). In most cases where a violation of the Article was claimed, the Court found that states had taken enough measures and, hence, no violation was constituted. However, in *Mehmet entürk and Bekir entürk v. Turkey*, the state was responsible since a patient’s life was intentionally and knowingly exposed to peril due to the denial of emergency treatment. In *Aydođu v. Turkey*, a patient could not get emergency medical services because of the hazardous system of the hospital. Although the authorities knew about the circumstances, they did not take the proper steps to ratify the system.

Several cases need to be addressed to interpret further Article 2 concerning compulsory vaccination. The judgments in the cases showed that compulsory vaccination or vaccination itself does not constitute a violation of Article 2. In *Association X*, where applicants were parents of the children, their children faced severe consequences due to vaccination. The ECHR Commission and ECtHR stated that Article 2 vests both positive and negative obligations upon the state (*Association X v the United Kingdom*, 1978, para 32). The Commission found that, though there are deaths and severe consequences due to vaccination, it cannot be concluded that the state intended to harm the children. The state must protect its citizens, and compulsory vaccination is one of the mechanisms (*Association X v the United Kingdom*, 1978). In another case, the applicants claimed in the petition that compulsory vaccination infringed on the right to life.

However, the applicants could not provide any evidence that showed the violation of Article 2 (*Boffa and Others v. San Marino, 1998*). In other cases, the ECtHR observed that compulsory and voluntary vaccination does not violate Article 2 (*Hornych v Czech Republic*). In *Acmanne and Others v. Belgium*, the school denied the appellants' admission since they were not vaccinated. In the case above, the appellants claimed a violation of the Article. The Court did not find the merit of the violation of Article 2.

From the interpretation of the Commission and ECtHR, the state should save and protect lives. Through compulsory vaccination, the state aims to protect the lives of its citizens. Hence, the positive obligation of Article 2 upon the state is to protect the lives of its citizens. A state can take measures such as compulsory vaccination to create herd immunity and to prevent the widespread pandemic. It is a way to safeguard the lives of citizens (*Camilleri, 2019*). Therefore, Article 2 is favourable for both the state and its citizens. Mandatory vaccination aims to create herd immunity and protect citizens from pandemic threats.

CONCLUSION

After the discussion above and analysis of the judicial instruments, from a bird's eye view, the government can take strict measures to impose a compulsory vaccination policy on the citizens to protect them from the deadly COVID-19 virus. People with a high level of vaccination develop strong, complex immunity, significantly reducing COVID-19 transmissions in society. Since children cannot take vaccines and due to other restrictions on vaccines, vaccinations among adults and middle-aged people in society create a safeguard against the spread of viruses. At the same time, there is no risk of transmitting the virus from the vaccinated people. Though it was discussed that COVID-19 vaccines do not give 100 percent immunity against the virus, they reduce the chance of hospitalization and transmission. The states that have achieved over 60 percent vaccinations among their citizens saw a reduced infection rate after the vaccination programs. Some states are returning to normalcy and have started opening public institutions such as schools and workplaces, and permitting social gatherings. For almost two years, the coronavirus COVID-19 has disrupted people's lives and suffered enormously due to the pandemic. Making a safe

situation after the post-COVID-19 era is also the responsibility of a state. The government can adopt a mandatory vaccination policy to ensure public health safety. However, the policy cannot be forced directly, like how punishment is executed after an offence. Non-compliance with vaccination cannot be treated as an offence, but negative consequences can be enforced.

Additionally, exceptions must be given to those who have their own beliefs. If someone has a custom of not taking vaccination, or if someone's religion does not allow it, or if someone is not willing to take the vaccination, the state cannot be obliged to take that individual's vaccine. For example, suppose someone can demonstrate that their religion or belief prohibits them from receiving a vaccination. In this case, the person can apply public health admiration with the evidence. Suppose the designated administration is convinced with the application and the evidence. In that case, that person or group can receive recognition, such as a card, code, or pass, indicating or proving that they are exceptional. The procedure can vary from state to state. At the same time, those individuals unwilling to take vaccinations must take alternative measures to ensure that the virus does not spread from them. Since the transmission and infection rates are higher, even without any symptoms, a person can have coronavirus, and that person can transmit the virus to other people. Although vaccination cannot completely prevent virus transmission, it significantly reduces the risk of infection. It should be mentioned that regarding the compulsory vaccination of minors, the state must ensure that safety precautions are taken and should not put anyone under any threat due to vaccination. It can be argued in both ways that not depriving anyone of vaccination and, at the same time, safeguarding those who are unable to take vaccination or who have imminent danger from vaccination can be done in both ways. Both parties are entitled to human rights under the ECHR.

Since the citizens' right to life or liberty is allowed to be restricted under Article 5(1) of the Constitution of Malaysia, the government is not barred from conducting mandatory vaccination programs for public health protection. However, the government may adopt a middle policy like other countries worldwide. The line between 'mandatory vaccination' and 'forced vaccination' should be understood. Citizens should not be forced to get vaccinated; instead, they should get vaccinated in exchange for service. Although this practice is prevalent

in Malaysia, employers should request that employees be vaccinated as part of good employment practices to keep the workplace safe. However, the employer does not force them but upholds their freedom of choice to get vaccinated. In this religious or customary reluctance parameter, the government may shift the concept of ‘freedom of choice’ from the choice to get vaccinated. Because multiple vaccinations are available and approved for use in Malaysia, the concerned citizen may choose a vaccine whose components will not conflict with his religion or customary issues. This method may help Malaysia’s government find a middle way to tackle this resistance at present or in the future. A state must respect the wishes of its citizens, and at the same time, citizens cannot do anything that jeopardizes public health. If both parties work coherently, no right will be curtailed. As a result, a state can take drastic measures to ensure mass compulsory vaccination of citizens to protect society from COVID-19, with the flexibility to make exceptions for specific individuals.

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