

LEGAL APPRAISAL OF SEX EDUCATION IN MALAYSIAN SCHOOLS

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Abstract: *Teaching sexuality in schools is controversial and it garners support and opposition from the stakeholders. This paper aims to present the legal and social justification and disapproval to the proposal to introduce sex education in schools through the exploration of the United Nation Convention on the Right's Child (UNCRC). Argument in this paper is based on the premise that children are naive and vulnerable, and they are easily influenced by negative and unfamiliar input. Unlimited media and peer pressure are said to have some bearing on children's sexual knowledge though its importance is undeniable. Bearing that in mind, this paper emphasizes that there are other fundamental issues pertaining to sex education that need serious attention. This study begins by describing the meaning of sexual education and the reasons its introduction at Malaysian schools. It then highlights the role of moral and religious teachings as well as parental responsibility in curbing social problems associated with sex. This paper suggests that while it is acceptable for a child to get more information about sexual health, such right should be exercised with caution, while parents and guardians should play an active role in deciding what is the best interests of child relating to 'sex education'.*

Keywords: *Sex Education, Parental Responsibility, Rights of A Child*

Introduction

Morality of young people is worrying in Malaysia as it was reported that there were increment of 111 percent in juvenile crimes. In 2013, the statistic released by the Malaysian Royal Police showed that there were 7,816 reported cases as compared to 3,700 cases reported in 2012. The statistic shows increment of 4,116 cases including sexual crime involving rape and sodomy. The statistics of 2014 and 2015 released by the Department of Social Welfare, Malaysia show a significant decrease of juvenile offenders, from 5,096 to 4,569, a drop of ten per cent. What is more shocking is the number of repeat offence has increased 12.4 per cent even though the number of first offence declined by 12.1 per cent (Department of Statistic Malaysia, 2016). In a research to identify contributing factors to social crisis, Haja Mydin et al (2016) identified peers influence, family's condition, attraction to each other are among the factors in committing

sexual offences. In a latest study by the Malaysian Population and Family Survey (MPFS) in 2014, it was found that the level of knowledge of adolescents about their reproductive organs was at average level; around 55 per cent of the adolescents know about transmission of HIV/AIDS through sex and about 73 per cent know about disease transmission through sexual intercourse. What is more worrying is that the level of knowledge relating to sexual intercourse is low, between 17 to 33 per cent. The knowledge includes knowledge that a girl can become pregnant the first time she engages in sexual intercourse (33.7 per cent); knowledge that condoms can prevent sexually transmitted disease (33.3 per cent); and knowledge that a girl may become pregnant even when ejaculations takes place outside the vagina (17.8 per cent). The percentage of premarital sex among adolescent is recorded at 4.8 per cent, a 100 per cent increase from 2.2 per cent than the survey made in 2004. Out of the 4.8 per cent, the percentage of using contraceptives is only one third (LPPKN, 2016). High number of teenage pregnancies and out of wedlock pregnancies is also a crucial argument to support sex education (Khadijah Alavi, 2012) though the form is not ascertained.

To deal with this problematic condition, sex and sexuality education is seen an alternative resolution. Education is one of the means of empowerment that allows full participation in development process (United Nations, 1994) and without education, adolescents maybe affected. Sex education is intended to empower children and young people with the knowledge, skills and values to make informed decisions and responsible choices about their sexuality and lifestyle. This will promote positive practice relating to health, relationship and help children and young persons in fostering constructive norm about themselves (UNESCO).

Sex and sexuality education is encouraged through international effort amidst various social problems linked to sexuality including teenage pregnancies, unwanted pregnancies, baby dumping, illegitimate children and abortion. In Malaysia, the attempt is met with mix response. In June 2016, the Minister of Education, Dato Seri Mahdzir Khalid announced that the ministry was pursuing steps to introduce a suitable sex education syllabus for pre-schoolers. The calls to introduce the element of 'sexuality' in school curriculum is not new but was made in the wake of the conviction of the British paedophile, Richard Huckle's who sexually abused a number of Malaysian children behind the mask of social worker (Hazlina Aziz, 2016).

In an announcement during the curricula revamp, the Director- General of Education, Tan Sri Dr. Khair Mohamad Yusof stated that the content of Reproductive and Social Health Education (PEERS) currently taught in primary and secondary schools will be upgraded, too. Although PEERS have been in schools since 1989 (Curriculum Development Centre, 2011), many cannot recall learning about puberty, sexual and reproductive system, and relationship with the opposite sex and this shows their ignorance of the teaching of this subject matter in class.

So how can we teach sexuality in order to nurture positive norms and values to our children? Can the current curricula effectively help children make responsible choices and accountable for their conduct? Even though popular writing on sexuality can be found in magazines but the effectiveness of such input is not known. Interestingly, in introducing sex education, the main concern is its objective. This objective can be derived from several resources. Sex education can function to curb social problems, to inculcate healthy lifestyle to young people and develop healthy relationship between genders.

Implementing sexuality education in Malaysia is challenging because the society believe that sex matters will be learnt naturally once a person is married. This belief is oblivious of the fact that sexuality education is related to various issues such as illness associated to sex and emerging social problems such as teenager's pregnancy, abortion and, abandoned babies. Despite that there is a concern that children and young people may become sexually active or want to experiment with sex when they are exposed to sexuality, there is an urgency to examine the surrounding issues related to sex education.

This paper examines emerging issues surrounding the proposal of sex education in Malaysia by scrutinizing existing research and while providing a critical analysis of the UNCRC. This paper explores the rights of a child to education and the rights of parents in determining education to their children. It also comes up with the suggestion to rethink the rights of children and parents, its social implications not only to children but also to parents and school teachers in taking the burden of teaching matters related to sexuality in classrooms.

Literature Review

Children are vulnerable due to their age and immaturity which makes them susceptible to influences of the media and their peers (UNESCO). Children have been defined as those under the age of eighteen years old (Section 2 of the Age of Majority Act 1971 [Act 21]; Article 1 of the UNCRC and adolescents who are reaching adulthood are at a critical stage as some may face identity crisis and the desire to know more about sexuality. In this era of unlimited information and borderless world, children and young people are being exposed to all kind of sexuality information both in informal and informal settings and these may confuse them (UNESCO). Aggleton et al (2012), UNESCO (2009), and Bearinger (2007) suggest that a good sexuality education has some positive impact on sexual behaviours.

Tabatabaie (2015) suggests that there is an increasing overlap between 'immaturity' and 'sexuality' in the lives of contemporary young people and this has rendered childhood/adolescent sexuality and sex education a challenging issue for many Muslims in present times. This calls for an acknowledgement of childhood or adolescent sexuality and agency as crucial subjects of (re)examination, particularly in Islamic studies and regarding young Muslims' sex education needs. However, Zahra Fazli Khalaf et al (2014) stated that school-based sexuality education is not easily accomplished in Malaysia due to its multicultural society and thus forms a barrier to national sexuality education.

There have been surveys and research conducted in determining the impacts of sex education in Malaysia. Iyer, Clarke and Aggleton (2014) look at barriers in implementing sexuality education in Asia including Malaysia. They demonstrate that cultural and contextual factors, nonexistence of supportive enabling environment, lack of resources and school factors are impediments to a good sexual education delivery. A good sexual education is important if we were to achieve its main objectives.

In 2011, a study by the Centre for General Studies, Universiti Kebangsaan Malaysia (UKM), on whether sex education or elements of it are being taught in Malaysian schools concluded that 90 per cent of the respondents agreed that sex education had not been taught in Malaysian schools. The respondents were asked to compare what they had learned in school with the aspects of sex education based on the United Nations Educational, Scientific and Cultural Organisation's (UNESCO) 2009 curriculum guidelines. According to respondents,

what was taught in classes were related to the physical development of children and adolescents, development of the reproductive and fertility system and sex within the Islamic context (Johari Taib, *et. al*, 2012).

In another 2011 study by Universiti Malaya's Department of Social Administration and Justice on the effectiveness of a school-based sexual abuse prevention curriculum, it was found that only 40 per cent of 9-year-old respondents said they knew what to do in instances of an adult stranger touching them in an inappropriate way. This is an evidence showing that the current sex education syllabus does not serve its purpose.

Findings of the study conducted by Mazlina Che Mustapha et al (2015) exhibit lack of knowledge about sexuality and reproductive health among Malaysian adolescents. In February 2016, a non-government organization providing family planning services has offered its assistance to Malaysia to carry out sexuality education sessions in schools. International Planned Parenthood Federation (IPPF) East and South-East Asia and Oceania claims that if the Government cannot implement sex education for any reason, the NGOs are willing to assist (*The Star* 2016). UNESCO's case studies in China, Kenya, Mexico, Jamaica, Nigeria and Vietnam shows that strong political will is needed to support sexuality education. Due to its sensitive nature, implementation needs more than just administrative measures (UNESCO, 2010). Thus, a sustainable plan should be engaged by educators in disseminating education on sexuality among children and young people.

Rights of the Child and Sex Education

International allegiance in the promotion of sex education among children and young persons can be found in various instruments including the United Nation Convention on the Right's Child (UNCRC). Since the introduction of the UNCRC, there has been rapid development to bring children's rights to the public attention. Although children's right brings uneasiness to scholars but one cannot denies the importance of children's rights (Fortin, 2009).

Article 13 of the UNCRC provides that,

"The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice."

Article 14, UNCRC stated that:

"2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child."

Article 24, UNCRC reads as follows:

"States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(f) To develop preventive health care, guidance for parents and family planning education and services.”

The right to seek, receive and impart information has been argued to include the right to obtain information and education on their sexual reproductive health (SRH) with appropriate exercise of parental rights under Article 14 and this is closely related to Article 24 of the UNCRC that guarantees the right to access health facilities and highest attainable standard of health (International Women’s Health Coalition). Sex education is seen as an important means to prevent transmission of HIV/ AIDS which has impact on children and women (Samuels et al, 2013).

Committee on the Rights of the Child in the General Comment No. 15 (CRC, 2013) acknowledges new health problems facing children and their effect on children including HIV/ AIDS. It also stresses on what should be included in protection of health by stating that:

“10. All policies and programmes affecting children’s health should be grounded in a broad approach to gender equality that ensures young women’s full political participation; social and economic empowerment; recognition of equal rights related to sexual and reproductive health; and equal access to information, education, justice and security, including the elimination of all forms of sexual and gender-based violence.” (CRC, 2013)

“24. Children’s right to health contains a set of freedoms and entitlements. The freedoms, which are of increasing importance in accordance with growing capacity and maturity, include the right to control one’s health and body, including sexual and reproductive freedom to make responsible choices. The entitlements include access to a range of facilities, goods, services and conditions that provide equality of opportunity for every child to enjoy the highest attainable standard of health” (CRC, 2013)

“31. In accordance with their evolving capacities, children should have access to confidential counselling and advice without parental or legal guardian consent, where this is assessed by the professionals working with the child to be in the child’s best interests. States should clarify the legislative procedures for the designation of appropriate caregivers for children without parents or legal guardians, who can consent on the child’s behalf or assist the child in consenting, depending on the child’s age and maturity. States should review and consider allowing children to consent to certain medical treatments and interventions without the permission of a parent, caregiver, or guardian, such as HIV testing and sexual and reproductive health services, including education and guidance on sexual health, contraception and safe abortion.” (CRC, 2013)

“34. Interventions should include attention to still births, pre-term birth complications, birth asphyxia, low birth weight, mother-to-child transmission of HIV and other sexually transmitted infections, neonatal infections, pneumonia, diarrhoea, measles, under- and malnutrition, malaria, accidents, violence, suicide and adolescent maternal morbidity and mortality. Strengthening health systems to provide such interventions to all children in the context of the continuum of care for reproductive, maternal, newborn and children’s health, including screening for birth defects, safe delivery services and care for the newborn are recommended. Maternal and perinatal mortality audits should be conducted regularly for the purposes of prevention and accountability.” (CRC, 2013)

“56. Given the high rates of pregnancy among adolescents globally and the additional risks of associated morbidity and mortality, States should ensure that health systems and services are able to meet the specific sexual and reproductive health needs of adolescents, including family planning and safe abortion services. States should work to ensure that girls can make autonomous and informed decisions on their reproductive health. Discrimination based on adolescent pregnancy, such as expulsion from schools, should be prohibited, and opportunities for continuous education should be ensured.” (CRC, 2013)

“60. Sexual and reproductive health education should include self-awareness and knowledge about the body, including anatomical, physiological and emotional aspects, and should be accessible to all children, girls and boys. It should include content related to sexual health and well-being, such as information about body changes and maturation processes, and designed in a manner through which children are able to gain knowledge regarding reproductive health and the prevention of gender-based violence, and adopt responsible sexual behaviour.” (CRC, 2013)

“69. Family planning services should be situated within comprehensive sexual and reproductive health services and should encompass sexuality education, including counselling. They can be considered part of the continuum of services described in article 24, paragraph 2 (d), and should be designed to enable all couples and individuals to make sexual and reproductive decisions freely and responsibly, including the number, spacing and timing of their children, and to give them the information and means to do so. Attention should be given to ensuring confidential, universal access to goods and services for both married and unmarried female and male adolescents. States should ensure that adolescents are not deprived of any sexual and reproductive health information or services due to providers’ conscientious objections.” (CRC, 2013)

Various non-governmental organizations, United Nations Special Rapporteurs, and treaty-monitoring bodies assert children’s right to comprehensive sex education despite claims that it would encourage adolescents to experiment with their sexuality. This assertion of a right to comprehensive sex education is said to be erroneous and misleading there is no such mention in on comprehensive sex education, or any other form of sex education or training. From customary point of view, nothing can be found in international consensus documents and other declarations or in State practice to show universal agreement on sex education. Without such right expressly provided in treaty or custom, the right does not exist (Curvino and Fischer, 2014).

According to Athar (1996), there is an obvious reason for Muslim parents do not or cannot discuss sex education with their children is because of their cultural upbringing, not their religious training. Sex education for children and adolescents is widely regarded by Muslims as ‘dangerous knowledge to the vulnerable’ that ‘awakens’ premature (i.e. premarital) sexuality and undermines Islamic identity. Issues arising from sexuality are not new at all in Islam. Islam highlights the importance of puberty and this can be seen when Islam teaches us to separate bedrooms between sister and brother. Parents are required to teach their children on cleanliness especially in taking the mandatory bath once they reach the age of puberty. Islam also stressed the importance of covering *aurah* not only for female but male. This arguably shows that Islam does not abandon issues relating to sexuality but its delivery to young generation must be executed carefully.

The value of fear to Allah for committing adultery that leads to out of wedlock pregnancy is essential in sex education. Respecting one's body and others and protecting *al-nasl* is one of the objective of syariah (*maqasid al-syariah*) which can be addressed as early as possible for instance in schools. There has been plethora of books written on raising children according to Islam as shown by the Prophet Muhammad (p.b.u.h) (see Jamal Abdul Rahman, 2014, Abdullah Nashih Ulwan, 2000). Hence, the issue of child upbringing has been highlighted in Islam (see Abdul Karim Bakkar, 2014) and regardless in which era, Islam plays an important role in upbringing of children and young people. Instilling ethical aspects and morality about sexuality matters according to Islamic perspective is essential.

The government suggests sex education to include physical and emotional changes during puberty, about friendship, love and marriage, how to seek help if there is sexual harassment or abuse, the challenges of marriage and the rights of children. The content of Reproductive and Social Health Education (PEERS) have been in schools since 1989 (Curriculum Development Centre, 2011), but only around two third of the respondents in a survey recalled learning about puberty, sexual and reproductive system, and relationship with the opposite sex. However, the reality is that exposing school teachers to such information is complicated as there is no consensus as how such information should be taught to our young generation and again it depends on the creativity and knowledge of school teachers. Kirby et al (2006) classified selection of teachers, their training, supervision and support as vital component of an effective sex education.

Lack of information on sexuality could be harmful to children especially for those children who are adventurous to try new things. Islam reminds us to control our vision when looking at the opposite gender. How could this be embraced by today's generation in the advance of technology? Watching pornographic videos and VCDs are contrary to controlling our vision, in fact, it could be a triggering factor to initiate sexual activities. In the Quran, Surah Luqman tells us on the wise advice given by a father towards his son. In fact, Imam Al-Ghazali also provides some advice to children and young people on the importance of knowledge (see Syed Nawab Ali, 2005)

Knowledge on sexuality will presumably harmful to our children if they misunderstood the concepts and objectives of such education. Sex education can be a preparation to adulthood in such a challenging environment when there is a blurring boundary in discussing sexuality. In addition, the emerging complicated issues such as homosexual, lesbian and even pan kid, if these are not properly dealt with by parents and the members of the society, it could exacerbate into a severe problem in the society. Controlling sexual desire among children and young people are challenging especially those who have high sense of exploration and adventurous attitude about sexuality. As for teenagers who are pregnant out of wedlock, they are being socially excluded and many are sent to shelter homes and rehabilitation institution. Out-of-wedlock teen's pregnancy is a prolong problem yet discussion on this as sexuality problems are not an open topic between adults (parents and guardian) and children. For Malaysians, this is very much related to custom, culture and context (Iyer, Clarke and Aggleton, 2014) where sexuality is treated as a private subject and never or rarely being discussed with children.

Apart from preparing children and young persons with sex education in formal setting, support from the parents are relatively crucial because parents can reinforce lessons learned at school. However, there is likely problems that parents are well informed and not updated with contemporary challenges pertaining to sex and sexuality such as the problem of sexual

grooming, sexual abuse and cyber stalker or sexual predators on the Internet. (see Syahirah Abdul Shukor, 2007)

Parental Responsibility and Sex Education

Parents are considered the closest person to the child and they bear responsibilities in ensuring that children are not harmed when receiving sex education. In relation to children education and upbringing, the term parental responsibilities must be contemplated. Parents rights to determine what is good and what is bad for their children must be respected particularly in delicate matters as sex education and its contents and delivery.

Article 14 of the UNCRC enunciated that:

“2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.”

The rights and duties of parents to provide direction should not interfere with the adolescents’ rights and should respect the evolving capacities of the children (CRC, 2016). The evolving capacities is defined as:

“18. ... the process of maturation and learning through which children progressively acquire competencies, understanding and increasing levels of agency to take responsibility and exercise their rights. The Committee has argued that the more a child knows and understands, the more his or her parents will have to transform direction and guidance into reminders and gradually to an exchange on an equal footing.” (CRC, 2016)

To balance between the evolving capacities and protection that should be provided to adolescents:

“20. ... consideration should be given to a range of factors affecting decision-making, including the level of risk involved, the potential for exploitation, understanding of adolescent development, recognition that competence and understanding do not necessarily develop equally across all fields at the same pace and recognition of individual experience and capacity.” (CRC, 2016)

In Malaysia, the term ‘parental responsibility’ can be found in Child Act 2001. However, section 31 of the Child Act 2001 only provides for the requirement for parents to be present in court’s trial in cases involving their children. As a signatory to the UNCRC, Malaysia has reserved eight Articles from the Convention. Among the right which has been reserved is the right to information (Article 13 of the Convention). Although there has been suggestion (see SUHAKAM: 2005) to withdraw the reservation, unfortunately, the action to withdraw is still ambiguous. The reservations will be lifted until the government has introduced a new legislation which makes it possible to lift the reservations (Farah Nini Dusuki, 2012). For example, the Malaysian government has reserved compulsory education and the reservation was lifted once the Education Act 1996 was amended to include compulsory primary education.

¹ Ibid., para. 17.

Discussions

The introduction of sex education at Malaysian schools are inseparable from our moral and religion values and teachings to ensure that the teachings is moulded based on our culture, custom, social environment, beliefs and heritage. It must be emphasized that Islam is not only the religion of the country but also a way of life for many Malay-Muslims and inseparable in the context of daily life. In discussing sex education, there are fundamental issues which need to be tackled; such as respecting woman and children as vulnerable groups and the importance of highlighting security and safety in our society. Even though it is impossible to precisely identify the factors of sexual offences and children as numerous factors could have interact with one another, it is often wise to see the benefit and detrimental effect of sex education from different perspectives.

The attempt to introduce sex education at schools implicitly reflects the government's intention to instil new perspective about sex in today's world. No matter how advance our life is, old values about relationship between man and woman is precious. In other words, the government attempts to construct children and sexuality are inseparable in governing children and the young generation today. However, we must bear in mind of the implication of such policies to school teachers who are already stressed out with heavy workload and responsibility. Their capabilities and cultural impediments relating to open discussion about sex in classrooms with the students must be taken into consideration. The possibility of age gap between the school teachers and children might create uneasiness among school teachers, and even knowledge gap of the technical know-how. Thus, dedicated teachers specializing in internet and this delicate matter must be trained especially when it also involves privacy and confidentiality. Specially trained educators can help address concern on reliability of the content and competencies in teaching about sex and sexuality in classrooms.

The existing Malaysian Education Act 1996 [Act 550] is silent about parental rights in determining their child education but the attempt to share the obligation to introduce sex education in schools is a way to provide some legal rights to school teachers in tackling problems associated to sexuality.

Conclusions

The proposal to introduce sex education to the Malaysian children is complicated due to two reasons, firstly, parental willingness and consent about their children's education, secondly, the disclosure of the proposed sex education to the public. It is important for both children and the public i.e. parents to be informed of the importance of gender differences and sexuality in society. This may help to reduce the doubt over sex education in schools. In short, in charting sex education in Malaysian schools, one cannot deny the importance of the existing tradition and social values of the society compared to the Western counterparts. In fact, sex education itself has been a controversial area of public policy for the past twenty years in England (Monk, 2002). The move to introduce sex education can be interpreted as a radical move by the Malaysian government as it implicitly relates to our young generation future on how they will perceive sex in their life.

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