

## **EDUCATION FOR ALL AND CHILDREN'S RIGHT TO EDUCATION IN MALAYSIA**

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### **Abstract**

*This article discusses the issue of children's right to education in Malaysia in the context of being a signatory to the United Nations Declaration on Human Rights and the United Nations' Convention on the Rights of the Child. The paper begins by discussing the right to education in Islam and some current developments in the local educational system in the context of complying with the international commitments such as the United Nations Declaration on Children's Right to Education and the Millennium Development Goals of the United Nations' Development Programme, as well as the Education for All (EFA) movement launched by UNESCO in 1990. It further elaborates on the Malaysian educational system as well as the legal framework established in Malaysia with due emphasis on the issue of free and compulsory primary education and children's right to education in Islam.*

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### **The Right to Education in Islam**

The right of a person to education in Islam is clearly stated in the first five verses of Surah Al-Alaq of the Holy Qur'an, as translated by Abdullah Yusuf Ali (1989):

Read in the name of your Lord who created, created man  
from a clot.  
Read, for your Lord is most Generous, Who teaches by  
means of the pen, teaches man what he does not know.

These Qur'anic verses emphasize the importance of reading, writing, and the pursuit of knowledge as the focal theme towards education. The Prophet (s.a.w) continuously taught the Muslims by giving sermons to men and women, and became the reference for the Muslim society in case of queries or disputes. A *hadith* (Ghazi Ahmad, 1968) clarifies this novel responsibility:

*Anas reported God's messenger (s.a.w) as saying: "The search for knowledge is an obligation laid on every Muslim."*  
(Ibn Majah and Baihaqi).

Clearly, Islam invites us to seek knowledge and this *hadith* signifies Islam's stance that learning or acquiring knowledge is an obligation for every Muslim. Thus, in the broadest sense of the word, it is the duty of a state to facilitate public education as an essential service to society. Parents are responsible for teaching their children the basic principles of Islam that guide them in their daily lives, such as performing ritual prayers (*solat*), and it is also the responsibility of parents to inculcate good moral values. This is because Islam considers children to be an *amanah* (trust) given to the family. Thus, the family is responsible for raising children to become righteous individuals, and the parents should nurture their children properly, including providing education (Al-Ahwani, 1970), in the hope that the children will understand Islam in a correct and comprehensive manner.

### Child Education in Islam

At the dawn of Islam, education was free, particularly with regard to the transmission of *'ilm* which was centred at the mosque. Gradually, other educational institutions such as the *maktab* (elementary education), *bayt al-hikmah* (the house of wisdom), *majalis* (the gatherings of scholars and students), *dar al-'ulum* (the house of knowledge) and *madaris* (schools or colleges) were developed (Nakosteen 1964; Makdisi, 1981; Shalaby, 1979). Later, it was centred in schools or conducted by teachers on a fee-paying basis. Later, the question arose as to whether education is an obligation, and if so, what kind of educational priority should be emphasised.

Abu Hasan 'Ali Ibn Muhammad al-Qabisi highlighted this issue by mentioning that educating the children is an obligation under the Shari'ah and everybody must strive towards its fulfilment. Moreover, parents especially the father is responsible for providing education to the children regarding the essentials of Islam, including *'ibadah*. The father is also obliged to teach his child to read the *Qur'an* and memorise some of the *Qur'anic* verses as they are required in *salah*. Should a father be unable to do so, he has to hire a teacher to educate his child. In the event where the parents cannot afford to pay for the child's basic education, relatives will fulfil the obligation to provide for the child's educational needs (Al-Ahwani, 1970). Al-Qabisi's affirmative view towards compulsory child education was subsequently maintained by other Muslim jurists and scholars including Ibn Rushd, al-Ghazali, al-Farabi and Ibn Khaldun (as cited by Rosnani Hashim, 1996).

Al-Qabisi upheld equality in education between boys and girls with respect to *Quranic* studies, which was the focus of early education. Nevertheless, Al-Qabisi encouraged senior female and male students to attend separate classes to avoid distraction. Al-Qabisi introduced the concept of universal and compulsory education for children, which emphasized religious education and knowledge of religious duties (Al-Ahwani, 1970).

In response to the administration of education, Al-Ahwani (1970) observed that Al-Qabisi highlights the role of the State to provide education for children and to pay the teacher out of the funds of *bayt al-mal*. Al-Mawardi (1983), on the other hand, discusses the responsibility of a state or government to the citizen. He views the government as a leader who is correspondingly responsible to the citizens for managing their various affairs effectively. Thus, education is one of the aspects that should be given high priority by the government.

According to Al-Attas (1979), the aim of education in Islam is the creation of “*good and righteous men and women*” that can be achieved through the inculcation of *adab* in human beings. Al-Attas (1999) asserts that *adab* “is the discipline of body, mind, and soul; the discipline that assures the recognition and acknowledgement of one’s proper place in relation to one’s physical, intellectual and spiritual capacities and potentials” (p. 22). By instilling such *adab* into human beings, the creation of the good man can be achieved. Al-Attas further mentions that:

Education is not merely a means to socio-economic ends, but primarily for the spiritual ends of man. The socio economic and political aspects are by no means insignificant, but they are subservient and instrumental to the spiritual ones.

(Wan Mohd Nor, 1998, p. 71)

This highlights the fundamental aim of education in Islam which promotes the development of individuals, encompassing intellectual capacity, physical ability and spiritual depth as exemplified by the recommendations of the First World Conference on Islamic Education in Mecca in 1977:

Education should aim at the balanced growth of the total personality of Man through the training of Man’s spirit, intellect, the rational self, feelings and bodily senses. The training imparted to a Muslim must be such that faith is infused into the whole of his personality and creates in him an emotional attachment to Islam and enables him to follow the Qur’an and Sunnah and be governed by the Islamic

system of values willingly and joyfully so that he may proceed to the realization of his status as Khalifatullah to whom Allah has promised the authority of the universe.

(Al-Attas, 1979, pp.158-159)

Hence, education is the key to life as it provides for the moral, spiritual, intellectual, and socio-economic development of human beings. The emphasis on education for children is, therefore, significant as they will be our future vicegerents.

### **United Nations Declarations on Children's Right to Education**

The United Nations' Children's Fund (UNICEF), formerly known as the United Nations' International Children's Emergency Fund, was established in 1946 to provide assistance to child victims of World War Two. Since 1953, its mandate has extended to assisting children in all developing countries and speaking out for children's rights. It is the only United Nations' agency concerned exclusively with the needs of children. Interestingly enough, the right of children to education is being seriously undermined in dozens of countries. In 1997, based on a publication of the United Nations Children's Fund (UNICEF, 1999), over 130 million children in developing countries were denied access to primary education despite considerable efforts at the international level to address the quandary (Hammarberg, 1998). This is evident from the participation of over one hundred and fifty (150) nations in various international conventions such as the United Nations Declaration on Human Rights and the United Nations Convention on the Rights of the Child (henceforth abbreviated as CRC) that call for the recognition of children's right to education.<sup>1</sup> Malaysia is a signatory state to both conventions and has pledged to abide by the treaties. Other than UNICEF, UNESCO, in 1990, launched a global programme called Education for All (EFA), emphasizing universal global education and primary education (UNESCO, 1995).

In relation to the above global efforts to secure and protect children's right to education, Article 26 of the United Nations Universal

Declaration on Human Rights 1948 (UDHR) defines the right of every human being to education:

*Everyone has the right to education which shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory.*

On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights. In its preamble, the declaration vows for the recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family as the foundation of freedom, justice and peace in the world (Universal Declaration of Human Rights, 1948). This universal covenant has long-recognized that fundamental education, at the very least, should be free and compulsory at the early stages of learning. This provision envisages the role of Member States in regulating the right to education in order to ensure that such minimum educational standards are adhered to by the States (Lonbay, 1989). This is because, as stressed by Tomasevski (2001), human rights law defines rights as claims addressed to governments that specify what governments should and should not exercise. In view of this, individual right to education entails corresponding obligations from the governments in guaranteeing free-compulsory primary education.

The provision further spells out the right of the parents to determine the future of their children's education. As such, parents have the right to enrol their children into the existing government system of education or private institutions, or perhaps conduct their children's education at home, at their own expense (home-schooling), or stick to religious education to conform with their convictions or otherwise (International Covenant on Economic, Social and Cultural Rights 1966, Article 13[3]). The parents' rights to choose a non-governmental school, or religious or moral education for their children thus limits the State's intervention in determining the type of education suitable for the children.

The UN General Assembly unanimously adopted the Convention on the Rights of the Child on 20 November 1989, and it entered into effect in September 1990 (Convention on the Rights of the Child, 1989). It has been ratified by 192 countries except the United States and Somalia. With the establishment of the United Nations Convention on the Rights of the Child (CRC) in 1989, children's rights have become the world's agenda with the principal goal of providing extensive protection for children against exploitation. S. 28 of this treaty maps out the international legal framework of the fundamental requirement of the right to education, which is to secure free and compulsory education for all children. For the first time, children are recognized as individuals with the right to develop physically, mentally, and socially to their full potential and to express their opinions freely. The Convention guarantees social, economic, as well as civil and political rights in one instrument. It comprehensively expresses the universal truth that a nation's future is only as promising as its next generation of citizens.

In light of the above, this paper explores the extent of children's rights to education from the Malaysian legal context. The definition of a child is taken from the Child Act 2001 which repeals the Juvenile Courts Act 1947, the Women and Girls' Protection Act 1973 and the Child Protection Act 1991 (Malaysia, 2001), which defines a child as "any one under the age of 18 years old." Prior to the amendment, the definition of a child in Malaysia was an anomaly without any consensus on the definition. This was due to the practice of different statutes dealing with different areas of law pertaining to children. This situation consequently created ambiguity in the interpretation of the term "a child" and thus, the changes made to the law are to standardize the interpretation accordingly.

With the implementation of the Child Act 2001, any disputes relating to the care, protection and rehabilitation of children are covered by this legislation. In fact, other legislations related to children are still in force to serve various aspects of laws. For instance, the Guardianship of Infants Act 1961 (Revised, 1998), which deals with family and divorce matters, stipulates that a Muslim child reaches the age of majority after

18 years of age and a non-Muslim child reaches the age of majority after twenty-one (21) years. On the other hand, the Children and Young Persons (Employment) Act 1966 defines a child to mean *“any person who has not completed his fourteenth year of age.”*

Malaysia has strictly adhered to this Child Act 2001's law in ensuring that the right of a child is extensively protected as enshrined in the preamble of this Act. The preamble, among others, recognized a child as a crucial component of society as well as a key towards the survival, development, and prosperity of society. Thus, it is the duty of the people to support and provide full protection to this precious entity.

The crux of the matter is that despite the Child Act 2001, the perception of children as individual citizens with individual rights has not been fully appreciated. Probably, this is because citizens' rights normally entail responsibilities and thus do not sit well with the position of children. In view of this, it is of utmost importance to recognise the right of children to be at par with other human beings.

In addition to adhering to the international standards, the right to education is also guaranteed under the Malaysian Federal Constitution. This is specified in Article 12, which states that every citizen in Malaysia has equal rights to education, regardless of their religion or race. This reflects that Malaysia is highly committed to providing equal access to education to all its citizens without discriminating against religious or racial background. Furthermore, based on Article 28 of the Conventions on the Right of the Children, it is the duty of the States to provide education to children. The States are not only advised to provide education but also to make primary education compulsory and free to all.

### **The Malaysian Education System and its Legal Framework**

Most Malaysian children, aged between four and six-years old, begin their early childhood education by attending preschools established by government, non-government, and private agencies. Children's primary education begins at the age of 6 and ends at 12. Children are promoted to the next year, regardless of their academic performance. After



completing six years at the primary school level, they will proceed to the lower secondary level for three (3) years, followed by two (2) years at the upper secondary level. Upon completion of the upper secondary level, they have a choice of studying Form 6 or attending matriculation (pre-university) programmes, polytechnics, public or private colleges. Upon completion of post secondary education, students may proceed to further their education at university; or enter the job market.

In governing its educational system, Malaysia has instituted six regulatory frameworks as follows:

- Education Act, 1996
- Private Higher Educational Institutions Act, 1996
- National Council on Higher Education Act, 1996
- National Accreditation Board Act, 1996
- Universities and University Colleges (Amendment) Act, 1996
- National Higher Education Fund Board Act, 1997

These legislations have key-roles to play in order to fulfil a range of objectives in the educational areas. The Education Act 1996 is the parent legislation that regulates primary and secondary education. Apart from the Education Act 1996 and its regulations, the provision of primary and secondary education is also guided by the National Education Philosophy (Ministry of Education, 2004) which states that:

Education in Malaysia is an on-going effort towards further developing the potential of individuals in a holistic and integrated manner, so as to produce individuals, who are intellectually, spiritually, emotionally and physically balanced and harmonious, based on a firm belief in and devotion to God. Such an effort is designed to produce Malaysian citizens who are knowledgeable and competent, who possess high moral standards, and who are well responsible and capable of achieving high level of personal well-being as well as being able to contribute to the harmony and betterment of the family, the society and the nation at large.

It should be noted that the Education Act, 1996 (Malaysia, 1998) has gone through a significant revision in the past few years to enable the implementation of compulsory education at primary school level. In 2002, the inclusion of s.29A in the Education Act 1996 carved out a new dimension to the Malaysian education system with the implementation of compulsory primary education, that took effect on 1<sup>st</sup> January 2003. This policy ensures that every child in Malaysia, including those with physical disabilities,<sup>2</sup> beginning at age six, regardless of sex, social and economic background, and residential locality, has the right to primary education. Accordingly, Malaysian parents must ensure that their children, at the age of six, or on the first day of the current school year when the child would be six years old, have access to compulsory primary education. With the said amendment made to the Education Act, the law declares the duty of parents to provide basic education to their children. Thus, a failure to fulfil this obligation would mean that the parents shall be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding six months or to both (Malaysia, 1998).

Based on the above amendment there is certainly a strong connection between the rights and duties of the state, and parents and children. The Federal Constitution recognizes the right of a person, including a child, to get proper education, while the parents are responsible to fulfil the needs of a child with regard to education. The Malaysian government, on the other hand, ought to provide a platform for educational programmes to flourish in the country. The “platform,” which encompasses the objectives, strategies, facilities, and instructive contents should become the fundamental principles of the educational system in Malaysia.

A critical analysis of the provisions in Part IV, Chapter 3 of the Educational Act, 1996, seems to propose that although parents are responsible for ensuring their children have compulsory primary schooling, the Act does not bind the parents to send their children to government schools. Therefore, parents have the discretion to choose the type of education they wish their children to enrol in, be it government or private

schools, as long as the children's right to get primary education is fulfilled accordingly as stipulated by the law.

Although primary education is compulsory in Malaysia, the Act does provide circumstances where a child may be exempted from compulsory education with the consent of the Minister if he considers it desirable and in the interest of the pupil or the public to do so (Malaysia, 1998). Thus far, there is not a single case that has challenged this provision. The provision can be interpreted loosely to include a child with chronic health problems such as being infected with a chronic disease, and thus barred from attending school due to the fear that the disease might be a threat to others.

With the transition to compulsory education at the primary level in 2003, a question arises with regard to home schooling. What is the Government's official stand on home schooling? In this context, parents who plan to self-educate their children at home may apply from the Ministry of Education based on the interpretation of s.29A (3) where the Minister's consent is the only avenue for exemption from attending primary education.

There are many reasons why the government is silent on this matter. The government would prefer all children in Malaysia to have equal basic education at the primary level and follow the stipulated national syllabus designed according to the social and economic needs of the country. The basis of the fear is that children who are taught by their parents at home would be deprived of certain benefits such as physical, emotional, psychological and social skills. Perhaps the children may be deprived of proper teaching and learning facilities. It must be noted that a child's right to basic education is not merely the basic literacy skills such as reading, writing, and arithmetic. Education should help children to develop their full potential, and the curriculum should contribute to the development of a holistic and balanced physical, mental, intellectual, and spiritual growth. The ultimate goal is to ensure that all children receive free basic education that is relevant.

With regard to the duration of compulsory education, s. 29 of the Education Act, 1996 stipulates that it be six years but it may be completed within five to seven years. On this matter, it is submitted that the Act gives due consideration to the different milestones of a child in getting basic education through the gestation period of five to seven years. This lenient approach clearly signifies that the primary educational system is not designed to put a burden on the children. The ultimate goal is to ensure that the children's right to get equal and good quality education is achieved. This progress has also made the Malaysian education system compliant with the United Nations Conventions on the Rights of the Child relating to compulsory primary education.

Before the amendment, although Malaysia is a signatory to the convention, it has reserved several provisions for further reviewing, including Article 28, which deals with free-compulsory schooling. In 1993 and 1998, the rate of enrolment of 7-year old children in Malaysia's primary schools was high, 98.57% and 95.06% respectively, despite the non-compulsory nature of primary education. When compulsory primary education took effect in 2003, the enrolment in primary schools recorded a high of 98.43%, indicating an increase of 2.37% from 1998 to 2003. However, compared to 2003, there was a 0.14% decrease. The trend of 15 years shows that even though primary education was not compulsory before 2003, the number of children who attended schools was still high and this shows the commitment of Malaysian parents to education (Ministry of Education, 2004).

Although compulsory education is only applicable at the primary level, the Malaysian government has strictly maintained that eleven years of basic education be met. This includes both primary and secondary school (Ministry of Education, 2004). This can be seen from efforts made by the government in providing various types of schooling such as academic, technical, vocational, and religious schools to cater for the different needs and interests of the children at upper secondary level. In general, there are two levels of secondary schools; lower and upper. The age target for lower secondary is basically from 13 to 15 for a 3-

year school programme and 16 to 17 for a 2-year upper secondary programme. Education at the lower secondary level is a continuation of the primary level. The basics of the literacy and mathematics skills are continued and all subjects are compulsory core subjects. Students at upper secondary schools, besides following the general education programme, begin to specialise in the sciences, arts, technical, vocational and religious disciplines.

Malaysia has embarked on basic compulsory primary education. But is education at this level available free for all as advocated by the international resolution? According to Tomasevski, education cannot be free-of-cost in theory or in practice as it is one of the major items in the budgets of the governments throughout the world. The requirement upon governments to make primary education free implies that governments should eliminate financial obstacles in order to enable all children, no matter how poor, to complete primary schooling (Tomasevski, 2001). Parents, on the other hand, have the general duty of financing their children's education to pay for the cost of books, transportation, school meals, uniforms, stationery, or sports equipment.

In Malaysia, the position of private schools is clear in that parents have to pay the fees and other expenses on a monthly or yearly basis. In public schools, parents also have to pay for the enrolment, but the amount is meager compared to the private schools. For government schools, fees are determined by the school authorities to include enrolment fees, insurance, co-curricular activities and sports attire.<sup>3</sup> As the amount of fees is subject to the school's discretion, the amount differs from school to school. For example, according to a group of parents that we have interviewed, the annual fees for *Sekolah Kebangsaan Taman Melati, Setapak*, Kuala Lumpur is RM90.00. This is seen as a basic amount. An extra charge of RM20.00 is charged for sports attire, thus amounting to RM110.00 while for *Sekolah Rendah Kebangsaan Jalan Pegawai, Alor Setar*, Kedah, the fees are RM30.00 (Sulaiman Ahmad, personal communication, April 7, 2005). Thus, it appears that the amount of fees is considerably influenced by the standard of living in the particular areas.

This indicates that education at the primary level in Malaysia is not totally free.

Although the fees of government schools are lower than those of private schools, the amount can be a burden for low income parents with many children attending schools in the same year. Eventually, some parents would be unable to send their children to school due to poverty. The scenario is also the same in the case of supplementary exercise books. Although textbooks are supplied by the government to low income parents, they may be burdened to buy such supplementary books for their children.

The Ministry of Education has identified poverty as one of the key contributing factors to dropouts among primary and secondary school students. The Ministry has provided various schemes to support the policy of compulsory primary education. First, since the early eighties the Ministry has introduced various schemes to assist children from low income families. The textbooks loan scheme, the school meal programme, and scholarships and school-boarding facilities are a part of the ongoing assistance provided by the Ministry.

Steps are also taken to improve the support system by providing financial aid to academically excellent students and children from poor families and those from remote areas. A number of trust funds and financial assistance programmes have been set up to ensure that every child gets the opportunity to have quality education. Among the recent initiatives are: (a) Poor Student's Trust Fund (PSTF). In 2003, a total of RM1.54 million had been spent to support 800 primary school students whereby each of the students received a maximum of RM2,200.00 a year to pay their school and examination fees and buy equipment, books, shoes, clothing, etc. (b) Financial Assistance for the underprivileged and vulnerable children in preparation for schooling, and (c) The Tuition Voucher Scheme, which is aimed at improving children's academic achievement from low income families. A total of RM200 million was allocated to support the poor students at stage two of their learning in critical subjects; Mathematics, Science, Bahasa Melayu and English

(Ministry of Education, 2004). These incentives stand for the purpose of paying examination fees, buying learning equipment and school uniforms and vouchers for extra-classes. Considering this, parents who do not enrol their children in primary school on the basis of poverty shall be liable for punishment.

As far as tertiary education is concerned, age limit is not a factor in getting access to the universities or colleges in Malaysia. However, before entering these higher educational institutions, all candidates must have basic qualifications as stipulated by the respective institutions. Even though furthering studies at the tertiary level is not compulsory in Malaysia, education at this level is given high priority by the government. The existence of tertiary educational institutions in Malaysia is paramount in producing an educated workforce for the country's development.

As discussed earlier, parents are under the obligation of ensuring that their children have proper education. We have also discussed that a child is defined as a person who is below 18, and parents, therefore, are responsible for providing education to their children, and this includes financial support. Still, a pertinent issue to financial support is raised: Are parents, particularly the father, responsible for providing financial support to his children at the tertiary level of education when they are above 18 years old? In *Karunairajah a/l Rasiah v Punithambigai a/p Poniah* (2004), the Federal Court, in allowing the appeal of the appellant, held that a father is not obliged to provide maintenance to his child who is above 18 years old for the purpose of pursuing or completing tertiary or vocational education. The judge, Abdul Hamid Mohamad J., in delivering the judgment, mentioned that children's personal views on parents' moral obligations towards their children should be disregarded. A case has to be decided according to the law as it stands, irrespective of a judge's personal view on the matter, and moral obligations can never take precedence over the law.

Section 95 of the Law Reform (Marriage and Divorce) Act 1976 states that parents are held responsible for maintaining their children up to the age of 18, unless the children have physical or mental disability.

The Court of Appeal, when deciding on the case of *Karunairajah a/l Rasiah v Punithambigai a/p Poniah* (2003), recognised involuntary financial independence as a physical and mental disability. However, the Federal Court overturned the decision that involuntary financial dependence of a child to complete tertiary education did not come within the ambit of physical or mental disability.

What is so significant in this case is the fact that *the judge acknowledged the fact that the Islamic Family Law Act (Federal Territories) 1984 appears to be more advanced than the existing civil family law*. Section 79 of the Act provides an exception that in a circumstance where maintenance shall expire when a child who reaches the age of 18, by reason of some mental or physical disability, is incapable of maintaining himself, a court may make an order upon application, to a child in order to extend the duration of maintenance “*to cover such further period as it thinks reasonable, to enable the child to pursue further or higher education or training. (Emphasis added)*” *Karunairajah a/l Rasiah v Punithambigai a/p Poniah* (2004, p. 410).

In another case, a son aged 22, sued his father Foo Woon Keat, 46, a businessman, to pay for his tertiary education in the United Kingdom, at a total cost of RM81,421 (Jaspal Singh, 2004). The Ipoh High Court Deputy Registrar, allowed the case to be tried at the High Court on the grounds that a student has the right to sue his father to pay for his tertiary education (“Student Can Sue,” 2004). The son, Foo Dui Geng, however, failed in his claim (Lim, 2004).

It can be concluded from the above cases, that under Malaysian law, a father is responsible for providing financial support to his child who is under 18 years old as maintenance, based on the Law Reform (Marriage & Divorce) Act 1976. Parents, however, are regarded as being morally responsible for financing their children’s education at the tertiary level until graduation and until he or she enters the workforce, but they are not legally obliged to do so when the children have attained the age of 18 years. This remains a conflict in the Malaysian family law system. It is suggested that a practical approach signified in the Islamic



Family Law Act (Federal Territories) 1984 in extending the period of maintenance from a father to a child when he/she is unable to take care of himself/herself after eighteen (18) years old should be put into consideration by the legislators. This would enhance, rather than limit, the responsibility of parents towards their children.

As discussed earlier, education in Malaysia is democratized without prejudice on the grounds of religion, race, or gender. This is evident from the official statistics of the Ministry of Education that from 1993 to 2003 in which the composition of males and females enrolled in public primary as well as secondary schools is about the same (Ministry of Education, 2004). In response to children with special needs or children with disabilities, the Education (Special Education) Regulation, 1997 provide that only children who are educable are eligible to attend special education (R.3[1] Special Education Regulations of 1997). A pupil with special needs is educable if he is able to manage himself without help and is confirmed by a panel consisting of a medical practitioner, an officer from the Ministry of Education and an officer from the Department of Welfare, as capable of undergoing the national educational programme (R. 3[2] Special Education Regulations of 1997). In implementing the special education curriculum, the regulation also states that teachers may modify the teaching or learning methods or techniques, the time for and sequence of activities, the subjects and the teaching cum learning resources in order to achieve the objectives and aims of special education (R. 3[4] Special Education Regulations of 1997).

The law also outlines exceptions to the above rule that children with physically disabling conditions but with mental ability to learn like normal pupils and pupils with multiple disabilities or with profound physical handicap or with severe mental retardation are ineligible to attend school (R. 3[1][a][b]) Special Education Regulations of 1997).

As a result of the exclusion, it seems that the right of a special child to education is restricted in certain circumstances (Rangel-Diaz, 2000). In this matter, the fear is that there might be some students with disabilities who will be deprived of getting basic education. It is humbly

submitted that as long as a child is capable of following and comprehending any programme structured in the special school, his right to be educated should not be deprived. However, if he could not follow any programme, the parents should undertake the role of taking care of their children themselves with the proper guidance and financial assistance from the government. This is because special children usually require extra care in terms of medication and specific learning tools, which are not accessible to poor families. The parents also need moral support and have to learn how to manage these children, and some of them would leave their jobs to take care of their children. Subsequently, the government as well as society should show more concern towards this particular group, including their families, by providing assistance and fulfilling their basic necessities, such as moral and financial support. These steps are essential to ensure that all disabled children are able to have access to equal educational opportunities, which are also indicative of a caring and loving society.

### **Conclusion**

At both the international and domestic levels, the right to education is acknowledged and the duty of providing basic child education falls on the shoulders of the parents, state and the public at large. In Malaysia, the right of children to education is enshrined in the Federal Constitution. It clearly stipulates that every child has the right to receive education. This opportunity would develop the child's potential according to his or her own ability and capability regardless of being normal or otherwise.

Malaysia has continued to offer education to children at various levels of learning. The introduction of compulsory primary schooling in 2003 manifests Malaysia's vision towards enhancing its educational system as well as recognizing children's right to education in this country.

It is humbly submitted that the Malaysian government should make education compulsory until the age of seventeen (17), an age where the majority of the children are expected to complete their secondary education. This matter is of utmost importance as a number of children

may leave school when they wish to do so or when being forced by their parents or guardians who may require them for other purposes, such as taking care of their younger siblings or working in order to ease their family's financial burden.

To conclude, the right to education is strongly connected with the development of the children's personality, moral conduct, and spiritual and intellectual growth. It entails commitment from parents and the government in guaranteeing education for their children. In Islam, education must strike a balance between fulfilling the economic needs of the nation and the development of personality that would earn the blessing of God in this world and the Hereafter. Thus, the proper revival of Muslims should start not just with a greater emphasis on education but also on the right concept of knowledge and education at all levels of learning.

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## Notes

1. Information on the conventions concluded within the United Nations is available at <http://untreaty.un.org> and the website of the Office of the High Commissioner on Human Rights <http://www.unhchr.ch>. For the Council of Europe, information is available at <http://www.conventions.coe.int> and for the Inter American human rights system at <http://www.oas.org>.
2. Refer to pupils with special needs. Regulation 2, Education (Special Education) Regulations 1997 (PU [A] 532/1997) defines “pupils with special needs” as pupils with visual impairment or hearing impairment or with learning disabilities. Section 40 of the 1996 Act states that the Minister of Education shall provide special education in special schools or in such primary or secondary schools as the Minister deems expedient and Section 41 empowers the Minister to make regulations on the categories of pupils requiring special education and the duration, curriculum and other matters relating to special education. In this matter, the Special Education Department under the Ministry of Education is responsible for administering the development and progress of these schools.
3. The annual fees for primary level in private schools in Malaysia would be around RM5,000 to RM30,000. For example, please visit <http://www.iis.edu.my/fees.html> and <http://www.gardenschool.edu.my/subfolder/admissions/feesschedule2.htm>.