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**THE ADEQUACY OF LEGAL MECHANISM OF CHILD COMMERCIAL
SEXUAL EXPLOITATION AND ABUSE IN MALAYSIA FROM THE
CONVENTION ON THE RIGHTS OF THE CHILD'S PERSPECTIVE**

BY

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ABSTRACT

This dissertation attempts to wade through all the legal mechanism available in Malaysia that afforded protection towards abused children, particularly those who are sexually abused and being used for the purpose of prostitution. A general overview of incidences of child abuse and child prostitution in Malaysia is also highlighted in this dissertation. Readers will get a general idea of the plight of these two areas from the discussions made based on statistic from the Social Welfare Department of Malaysia.

Provisions of the child protection laws in Malaysia are discussed and scrutinized in order to identify weaknesses that are apparent. The dissertation would emphasise certain Articles of the Convention on the Rights of the Child ('the CRC'), relating to child commercial sexual exploitation and abuse, which Malaysia has acceded in February 1995. With the acceding of the CRC, Malaysia has a duty to comply with the Articles of the CRC that it has acceded. Therefore, it is the objective of this dissertation to analyze and scrutinize existing laws and efforts that has been made by the government, to ensure that they comply with the Articles of the CRC. The dissertation would also discuss the efficacy and efficiency of administrative bodies dealing with child prostitution.

Upon completion of doing so, this dissertation will propose suggestions and reformations where it deemed necessary. The dissertation also provides a proposal for a new Act that deals with commercial exploitation of children.

ملخص البحث

تحاول هذه الأطروحة دراسة جميع الإجراءات القانونية المعتمدة في ماليزيا لحماية الأطفال من الابتزاز، سيما ضحايا الابتزاز الجنسي المستخدمين في الدعارة. كما تسلط الأطروحة الضوء على حالات الابتزاز و دعارة الأطفال في ماليزيا. و سيخرج القراء بفكرة عامة حول هاتين المسألتين من خلال المناقشة المرتكزة أساسا على إحصائيات وزارة الخدمة الاجتماعية بماليزيا.

هذا و تَتَفَحَّصُ الأطروحة قوانين حماية الأطفال في ماليزيا و تناقشها بهدف تحديد نقائصها الظاهرة. و تُعِيرُ الأطروحة بعض بنود ميثاق حقوق الطفل (CRC) المتعلقة بانتهاك حقوق الأطفال و استغلالهم جنسيا و الاتجار بهم في سوق الدعارة اهتماما خاصا. وقد صادقت ماليزيا على هذا الميثاق في شهر فبراير سنة 1995، و بمقتضى هذه المصادقة أصبحت ملزمة أدبيا بالامتثال لبنوده. و لأجل هذا، فإن هذه الأطروحة هي محاولة لمراجعة و تحليل القوانين و الجهود التي بذلتها الحكومة الماليزية لتجسيم بنود ميثاق حقوق الطفل. و فضلا عن هذا، تتناول الأطروحة بالتحليل مدى نجاعة و فاعلية الأجهزة الإدارية المختصة في التعامل مع قضايا دعارة الأطفال.

و بعد ما تقدم من تحليل و مناقشة، يخلص الباحث إلى تقديم المقترحات و التنقيحات التي تبدو ضرورية، كما يطرح مشروع قانون جديد يهدف إلى معالجة قضايا استغلال الأطفال و ابتزازهم في الأغراض التجارية.

APPROVAL PAGE

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DECLARATION

I hereby declare that this dissertation is the result of my own investigations, except where otherwise stated. Other sources are acknowledged by footnotes giving explicit references and bibliography is appended.

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Children and Young Persons Act 1947

Children and Young Persons Act 1969 (United Kingdom)

Criminal Justice Act 1991 (United Kingdom)

Domestic Violence Act 1994

Evidence Act 1950

Juvenile Courts Act 1947

Oaths and Affirmations Act 1949

Penal Code (Act 574)

Women and Girls Protection Act 1973

LIST OF ABBREVIATIONS

CLJ	Current Law Journal
CPA	Child Protection Act
CRC	Convention on the Rights of the Child
ECPAT	End of Child Prostitute in Asian Tourism
etc.	<i>(et cetera)</i> : and so forth
ibid.	<i>(ibidem)</i> : in the same place
MLJ	Malayan Law Journal
NGO	Non Governmental Organisation
p.	page
SCAN	Suspected Child Abuse and Neglect Team
SWD	Social Welfare Department
UNICEF	United Nations Children's Funds
WGPA	Women and Girls Protection Act

INTRODUCTION

1. BACKGROUND

Sexual abuse can be define as any sexual activity between an adult and a child, whether a boy or a girl, which includes rape, incest, sexual molestation and exploitation.¹ The abuse and exploitation of children is universal. This is due to their powerless and subordinate status that renders them vulnerable and dependent on adult intervention. Humanity's worst emerges when the gross abuse of children, especially in the area of sexual and commercial exploitation (i.e. sale and trafficking, prostitution, pornography and child labour), is tolerated and condoned.

Prostitution, sexual acts between two homosexuals, adultery, fornication and sale and purchase of pornographic materials are some of the of sexual offences which is considered to be victimless, in the sense that they involve consenting adults who voluntarily engaged in such activities. However, when paedophiliac tendency is evident in such circumstances, be it intra-familial or otherwise, grave concern have been voiced today particularly in the Asia Pacific region, where child prostitution has been identified as one of the unfortunate consequences of the booming tourist industry.

¹ Barbara Yen, *Sexual Abuse in Children*, Medical Social Worker University Hospital, Kuala Lumpur, 1996, p 1.

The objective of this dissertation is to examine what is the legal protection afforded to children from being sexually exploited or abused by their own parents, guardian or others for prostitution or immoral purposes.

It is also the scope of this dissertation to examine the efficacy of such protection and to suggest possible measures and reforms in curbing such abuse and exploitation. History has witnessed that it is in this field that the violations grow unabated in increasingly intolerable forms.

2. STATEMENT OF THE PROBLEM

It has been an increasing phenomenon of recent time for children, particularly young girls to be sold and trafficked across borders for the purpose of prostitution. Girls from Thailand, Philippines and even Malaysia and other neighbouring countries have been known to end up in Japanese brothel.

It is the intention of this dissertation to examine the adequacy and efficiency of the laws, which afforded protection to children in these aspects in Malaysia. It should be noted that Malaysia, being one of the states that have acceded certain provisions of the CRC in February 1995, should commit itself to develop ways and means to uphold children's rights as enshrined in the CRC. To date, there are four legislation which afforded protection to the welfare of a child:

- a) Child Protection Act 1991
- b) Penal Code

- c) Women and Girls Protection Act 1973; and
- d) Domestic Violence Act 1994.

It is in the opinion of the writer of this dissertation that although Acts have been enacted for this purpose, there are still a few weaknesses in its provisions, executions and practicality. Therefore, these four Acts are closely scrutinized to identify areas that should be developed and areas that are lacking.

3. SCOPE AND LIMITATION OF THE STUDY

The study is confined only to the laws that provide protections towards sexually abused children with specific reference to child prostitution. The legal standards that has been established by the CRC is the guideline on which the dissertation is comparatively examine, with the existing provisions regarding as such, in Malaysia. A comparison with several Asian countries would also be made but the dissertation will not concentrate on one particular country for this purpose. Due to time constraint, each and every statistics regarding the situation in Malaysia are confine solely to data from the Social Welfare Department Malaysia.

4. LITERATURE REVIEW

The social and legal awareness concerning sexually abused children is still at an infancy level in Malaysia. Unlike in the western part of the globe, where it has been a

matter of intermittent public concern for over a hundred years.² A few researches had been done in this area in Malaysia. Interest in child prostitution has sparked with the alarming rise of such lewd activities.

A few prominent academicians and activists from several non-governmental organisations have come out with reasonable researches in this area. But to date, there has not been a comprehensive research in child prostitution in connection with the Convention on the Rights of the Child's ('the CRC') legal standards. The CRC stands alone in the international human rights law as the clearest and most comprehensive expression of what the world community wants for its children. That being the case, it has introduced several rights to protection in this area, which has been accepted in international law as an international setting standard. It further charges the states that had ratified the convention with responsibility to realize those rights.

In Malaysia, the subject of child law itself can be gleaned from major textbooks on family law written by the late Professor Ahmad Ibrahim³ (Family Law in Malaysia: 1998) and Mimi Kamariah Majid⁴ (Family Law in Malaysia: 1999). Even then, the issues of children are being discussed in the light of family matters, for example, issues connected with custody, inheritance and maintenance.

² Cathy Cobley, *Child Abuse and the Law*, Cavendish Publishing Ltd, London, 1995, p 1.

³ Ahmad Ibrahim, *Family Law in Malaysia*, MLJ, Kuala Lumpur, 1998.

⁴ Mimi Kamariah Majid, *Family Law in Malaysia*, Butterworths Asia, Kuala Lumpur, 1999.

However, there are attempts made by several academicians and legal practitioners to point out several high profile issues involving children, such as child abuse. For instance, Rohani Abdul Rahim⁵ (*Undang-Undang Wanita dan Kanak-Kanak: 1991*) had discussed the problem in general, however discussions were also made on the efficiency of existing laws and several proposal to make up for the flaws in them.

Ann Wan Seng and Khadijah Alavi⁶ (*Penderaan Kanak-Kanak di Malaysia: 1997*) had discussed the problem from the social-legal aspects. The few articles published in legal journals, tend to concentrate more on the general discussion of child abuse (S. Augustine Paul: 1991⁷) or has the tendency to discuss newly legislated Act which afforded protection to children (Anisah Che Ngah: 1991⁸ and Nor Aini Abdullah: 1997⁹).

Alternatively, there are a few seminars and conferences that had been conducted by several organizations (Malaysian Council For Child Welfare and Malaysian Association for the Protection of Children: 1991, 1995, 1996, 1998) which dealt with several issues of child abuse. A lot of which touches the medical, psychological and

⁵ Rohani Abdul Rahim, *Undang-Undang Wanita dan Knak-Kanak*, Citra Publishing Sdn. Bhd., Bangi, 1991.

⁶ Khadijah Alavi, Ann Wan Seng, *Penderaan Kanak-Kanak di Malaysia*, Fajar Bakti Sdn. Bhd., Shah Alam, 1997.

⁷ S. Augustine Paul, *Child Abuse: The New Law*, [1991] CLJ lxxiii.

⁸ Anisah Che Ngah, *Akta Perlindungan Kanak-Kanak 1991*, *Malaysian Journal of Law and Society* 1 (1997) 103-120.

⁹ Nor Aini Abdullah, *Domestic Violence Act 1994*, *Malaysian Journal of Law and Society* 1 (1997) 121-127.

social side of the matter¹⁰. Nevertheless, the studies and works mentioned above touches the issue of child abuse in general. The scarcity of works and studies on sexually abused children that focussed on child prostitution is transparent. To date, there has yet to be a comprehensive legal study on this matter although it has been discussed briefly in a conference organised by the Malaysian Bar Council and the LAWASIA Family law and Family Rights Section (Conference on Children's Rights: 1995¹¹).

What the author of this dissertation wishes to accomplish is to conduct a study on the current development child prostitution in Malaysia from the legal perspective. The study introduces suggestions and proposal for reforms, which our legislature would find beneficial for their future plans to develop existing laws, to be in conformity with the CRC's legal standards. This dissertation is intended to serve as a contribution to those in the relevant legal circle so as to fill in the rift in this area. Malaysia being a signatory to the CRC bears the obligation to comply with the convention's standard. The writer hopes that the proposals for reform in this dissertation will be adopted by the government so as to comply with the standards of the CRC.

¹⁰ For example, Kevin D. Brown, *When is it Safe for the Abused Child to Return Home*, presented at the 2nd National Conference on Child Abuse and Neglect, 13th-14th July 1991, which discusses psychological and social effects of abused children.

¹¹ For example, Ambiga Sreenevasan, *Child Protection Laws/Child Prostitution*, presented at the Conference on Children's Rights, 26th-27th October 1995, Kuala Lumpur.

5. OUTLINE OF THE DISSERTATION

The first chapter of the dissertation focused on the definitions and the types of child abuse given by various academicians and researchers. Special attention will be given to discussions on sexual abuse as it is important and relevant to the main topic of this dissertation. Aside from that, the definition of who is regarded as a child will also be discussed.

The second chapter of the dissertation focused on the situation of child abuse in Malaysia. The discussion is a general one concentrating on various characteristics of the abused children, the abuser and the environment surrounding them. Discussions will be made based on the statistics given by the Social Welfare Department Malaysia. The chapter then progress on to discuss the situation of child prostitution in Malaysia. Again the statistics from the Social Welfare Department Malaysia are being used to analyze the degree of the problem.

The third chapter focused on the existing legislation and administrative bodies which deals with child prostitution. This chapter also highlighted the legal standards of CRC concerning child prostitution. An analysis is then made to determine whether the existing legislation coupled with the relevant administrative bodies, is adequate to combat the problem. This chapter also determines whether Malaysia has complied with the standards set by the CRC.

In the fourth chapter, suggestions and reforms will be given as part of the conclusion to this dissertation. Suggestions and reform will concentrate on the legal and social environment.

6. RESEARCH METHODOLOGY

This research is based on library research where references comprised textbooks, statutes, reports from seminars and decided cases. This is done to delineate the legal avenues already enshrined as law, as well as to provide background situation for child prostitution and abuse, also the options held to be most dependable or available to its victims and those who help them.

Online researches were conducted vigorously to retrieve materials concerning current development in other countries and reports from international conventions or conferences on children. This would give a more up-to-date representation of changes that have been proposed or implemented and even those still in its experimental or more radical approaches. The writer does acknowledge the time span needed before these practices become as wide spread or as accepted as the standard operating procedures.

Fieldwork was also conducted in the form of interviews with various hospitals' medical and social workers to get a clearer picture of the real incidences of child abuse. This precipitates a graphic depiction of the severity and pervasiveness of the situation in Malaysia and even its neighbouring countries. They also shed some

valuable light on the procedural and administrative obstacles faced in real-life dealing with child abuse and child prostitution.

In all, it has culminated to give a deeper and broader perspective concerning the issues of child prostitution and abuse.

CHAPTER 1

DEFINITIONS AND TYPES OF CHILD ABUSE

1.1 INTRODUCTION

The child sexual abuse phenomena has been discussed a lot, lately, in Malaysia. Cases on abused and neglected children have been the highlight of Malaysian mass media on many occasions. In fact, the first week of April 2000 was declared as Child Sexual Abuse Awareness week organised by the Malaysian Child Resource Institute ('MCRI') and 13 other organizations. The main objective of MCRI is to break the silence that prevails in most homes towards the subject as well as to educate the public on what child sexual abuse is.¹² Be that as it may, there is no concrete and comprehensive research on the topic just as yet, which plunge into the root of the problem and come out with a conclusion to elucidate the matter.

It is not doubted that a lot of books have been written on this issue but it must be noted that those books are written from the western perspective by those who does not understand our social structure and the condition of our local heritage. It is thereby submitted that the problems and solutions offered by these books, although might lend a helpful hand, may not be at all suitable to be practiced or applied in our society.

¹² The New Straits Times, 13 April 2000.