



**THE DEVELOPMENT OF EDUCATION LAW RELATING TO THE PUBLIC
UNIVERSITIES IN MALAYSIA:
TOWARDS LIBERALISATION OF THE UNIVERSITY GOVERNANCE AND
COMMERCIALISATION OF THE ACADEMIC ACTIVITIES.**

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1. INTRODUCTION

The role of education as a transformational tool in moulding and determining the destiny of nations is etched in the annals of history. This explains why education and society in Malaysia are inherently linked. The form of Malaysian educational system can be traced to the era of British colonialism starting at the beginning of the nineteenth century.

The impact of colonialism was twofold. First under the British rule, Malaya (known as Malaysia since 1963) developed into a multi ethnic society, incorporating Chinese and Indians within the indigenous Malayan society. Educational policies have since been highly influenced by this social structure. Second, Malaysia's educational system bears a heavy imprint of Britain's.(1)

All ethnic groups value education as the principal transmitter of cultural value, and as the primary channel for occupational and social mobility and prestige. The key to a better life in Malaysia is still viewed, by substantial number of parents, to be a tertiary education.

Malaysia has a major education business that is growing year by year as demand for education is on the increase.

Although tertiary education is provided by both public and private institutions, the earlier has always been the preference to the latter.

Since independence, education has been given a high political priority. The government plays a major role in determining and shaping the education system and policy as it has sought to utilize education as a means of achieving economic and social development under the direction of National Council of Higher Education. Presently, the Ministry of Higher Education is given the responsibility to supervise all institutions of higher learning.



Control and supervision is facilitated through the legal framework for both private and public institutions.(2)

Education in Malaysia is of various levels. It is conducted at both private and public institutions. It is governed by various laws. These laws are reviewed as when is necessary to suit the National Education Policy, the political agenda and the market needs. But the study in this paper is directed only to the law relating to public universities. Although there are many laws governing public universities, the main law is The Universities and University

Colleges Act 1971 (hereinafter referred to as “UUCA “). The UUCA has been amended five times since its enactment, and the most recent amendment was enforced on 1st February 2009. The amendment Act is called The Universities And University Colleges (Amendment) Act 2009 (hereinafter referred to as “UUCAA”). The main aim of this paper is to discuss the said amendment and its implications for public university governance.

2. THE BACKGROUND OF THE EDUCATION SYSTEM

Education In The Colonial Era

By the end of the colonial era in 1957, Malaya had four distinct educational systems. The first was the English-based one which was a result of the increasing need from the nineteenth century, for more English speaking people to work in commerce and government. The other three, following the ethnic divisions in Malaya, were the vernacular schools for the Malays, Chinese and Indians. Whereas, the vernacular schools provided basic education in the Malay, Chinese or Indian languages, the English system aimed at higher educational levels and was the path of upward mobility .The vernacular schools were never intended to attain a higher education level.(3)

Education After World War II

After world war two the British policy was orientated towards self determination for Malaya. The primary purpose of the new education system was to develop a common sense of identity among the peoples of Malaya with a view to furthering social stability following the granting of independence. The Education Act 1961 was one of compromise. This Act marked the beginning of the process of the “Malaysianisation” of the education system, which gathered pace in the 1970s. The government focussed on building national identity and creating skilled population in order to promote economic development. The 1961 Act made Bahasa Melayu a compulsory subject at all levels with a pass necessary for the award of school certificate. Although the vernacular school was retained, the Malay



language was made compulsory as a subject and it became apparent that a long term goal of the government was to make Malay the language of instruction for all children in Malaya – it would be the new national language (Bahasa Malaysia). In this regard, English was relegated to a secondary position for political reasons, although basic British educational structures, including the examination system, were retained.(4)

Communal riots after the 1969 federal election led to socio-economic changes in Malaysia, and issues related to language and education took centre stage. Malay claims for parity became the basis for policy formation. With regards to the medium of instruction in schools, the Minister of Education announced a timetable for the progressive implementation of Bahasa Malaysia in all schools beginning in 1970. Bahasa Malaysia became the Malaysian national language in 1970 . This was a critical issue, because, in the past, ability in English had dominated access to higher education. In this context society's perception was that employment prospect and socio-economic mobility could only be achieved by being English educated.

Presently although colonial schools continue to function, funded primarily by private means the educational system is dominated by publicly funded institutions in which Bahasa Malaysia is the medium of instruction.

Today , Malaysia being one of the fastest growing nation amongst the developing countries, has made great strides in improving the quality of life of its people as well as making advances in the areas of education, health, infrastructure and industry. This improvement in stature is reflected in its real gross domestic product (GDP) which has enjoyed an average growth of 6.5% per annum between 1957-2005. In 2009 the budget for education is RM47.7 billion or 23% of the total annual budget. The bulk of this figure - RM31 billion - is allocated to the Ministry Of Education and 14.7 billion going to the Ministry of Higher Education. The Malaysian government has a strong underlying commitment to provide equal access to quality educational opportunities for all Malaysian notwithstanding their geographical location or income levels.(5)

3. DEMOCRATISATION AND LIBERALISATION ERA

A review of higher education in 1971 found that the higher education was elitist and recommended that a larger proportion of “Bumiputra” (“sons of the soil”) students should be admitted to higher education through the provision of scholarship and special tuition. The recommendation stimulated the growth of private education in Malaysia , increased the government scholarship of students both in the country and abroad.(6)



Since the establishment of private schools in 1950s, private institutions had gradually increased their role in the Malaysian education system. The 1969 Essential (Higher Education Institution) Regulation barred private sector institutions from conferring degrees and foreign universities from setting up branch campuses .

However in the early 1970s private institutions began to offer pre-university courses ,and in the early 1980s private institutions become involved with innovative twinning and franchise arrangements in collaboration with foreign universities at Bachelor Degree level and other qualifications leading to the award of Certificates, Diplomas and Professional qualifications.(7)

Today the Malaysian education system is a reasonably successful one, responding to the demands for equity among the different ethnic groups as well as to the needs of a developing economy. The literacy rate is 84 percent, the figure for males and females being 89 percent and 79 percent, respectively. Primary school enrolment is 90 percent for both males and females, while enrolment at the secondary level is 58 percent for females and 66 percent for males. At the tertiary level it is 11 percent overall. (8)

Education Philosophy

The Ministry of Education defines the National Education Philosophy which has been described as follows (GETTS2000)

“Education in Malaysia is an ongoing 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 standard, and who are responsible and capable of achieving a high level of personal well being , as well as being able to contribute to the betterment of the family, the society and the nation at large” (9)

The government took various approaches in translating its philosophy into action. A mixed approach to development is increasingly being extended into the education field in an attempt to develop and meet the challenges of the 21st century through education and training.

New legislation in 1996 covering both the public and private education system marked the beginning of major democratisation and liberalisation in the education system .This has contributed to the growth of the number, type, size and scope of educational institutions at



all levels ,as the government seeks to develop a more dynamic and flexible education and training infrastructure. (10)

Democratization and liberalisation of higher education has transformed universities from an institution where a minority of elite were enrolled to a place where a large number of qualified college-going students resided. Democratisation and liberalisation made higher education more egalitarian , and at the same time minimised elitism and unequal opportunity .(11)

The term higher education is used in Malaysia to cover education Post SPM (post Secondary).Higher education is defined in the 1996 legislation as to include courses that lead to degrees, higher degrees, and post graduate diplomas. In the case of Malaysia, democratization and liberalisation of higher education is state driven and it was adopted as the principal avenue for upward socio economic mobility and national economic development. The revised educational policies were set out in The New Economic Policy (NEP), the aims of which were included in The Second Malaysian Plan (SMP) of 1970-1975. The goal was to raise the social economic circumstances of the Malay population and thereby dampen ethnic and social friction within Malaysia.(12) It is the major components of the affirmative action outline in The New Economic Policy (NEP) of 1970 ,which seeks to restructure society and eradication of poverty .(12)

4. THE EDUCATION LAW

Education law is the name given to the branch of civil laws that covers the laws and the regulations that govern federal and state education, including the administration and operation of educational institutions, school athletics, instruction methods, programs, and materials. This area of law encompasses issues relating to school, faculty, staff and students, including school disciplines and decriminalisation based on race, colour, national origin, sex or disability .(13)

Prior to 1996 , all education activities were governed by the 1961 Education Act. Between 1995 and 1997 ,this act was amended ,and a range of Acts were enacted. The current legislation directly relating to tertiary education in Malaysia is as follows:

Malaysian Qualifying Agency Act 2007 . This Act was enacted to set up a qualifying agency for higher education. **National Higher Education Act 1996** ,This Act was enacted to establish a higher education policy making council for public and private education .

Private Higher Institution Act 1996.This act enables private sector to establish a variety of institutions (degree granting or non degree), and foreign universities to open branch



campuses in Malaysia. It also allows the Minister of Education to grant permission to private colleges to conduct courses in English. The Universities and University Colleges Act 1971 (UUCA). This Act governs the public Universities and University Colleges .

National Higher Education Funding Act 1997. This Act established a higher education funding council . Universiti Teknologi MARA Act 1976. As part of the government's affirmative action policies, this Act created a separate, special university to provide tertiary education to Bumiputra students.

5. ISSUES RELATING TO THE PUBLIC UNIVERSITIES UNDER THE UUCA.

The UUCA is an Act that governs public universities and university colleges in Malaysia. Under the Act , the Ministry Of Higher Education is responsible for the supervision and control of public universities and University Colleges. At present there are 20 public universities in Malaysia .The Ministry exercise its control and supervision through the legal framework coupled with the various national policies relating to higher education. Under the UUCA , a public university is considered as a statutory body having its own Board of Directors.

A glaring defect of the UUCA is that it does not provide autonomous powers to public universities to enable them to decide independently and without external intervention. Calls were made by various groups to increase the universities' powers by amending the UUCA. University autonomy was one of the driving factors THAT led to the amendment of the UUCA. Different group of people view a university autonomy differently. However according to Wan Abdul Manan,

“A university autonomy can be defined as the overall ability of the university to exercise its power, duty and discretion in pursuit of its mission without external intervention. According to the Lima Declaration on Academic Freedom and Autonomy of Institution of Higher Education (1998) reinforced by Kampala Declaration autonomy refers to the independence of the universities from the state and all other forces of society to make decision regarding its internal government ,finances, administration, and establish its policy of education, research, extension of work, and other related activities .” (14)

In one respect, however, public universities enjoy separateness from the government. Public universities in Malaysia are established under an Act of Parliament, having a corporate personality and they are not sub-units of the Ministry Of Higher Education. However, although university employees are not government servants, their terms and conditions of service are governed by the Public Service Department. This is in view of the



fact that the universities employees enjoy the option to be in a pensionable scheme as regulated by the Pension Act and the legal duty to provide the pension benefits are undertaken by the government and not the universities. The Universities' Board of Directors are vested with the powers to enact their own statutes, rules and regulations relating to any matter including administration, academic and financial issues, and student and staff welfare. These powers may be exercised whenever the University deems fit and reasonable to achieve its objectives, vision and mission.

Prior to 1971 University of Malaya was the only public university. It was governed by the University of Malaya Act 1949 and The University Malaya Act 1961. Presently there are 20 Public Universities in Malaysia. Unlike the two University of Malaya Acts, the Universities And University Colleges Act provides detailed rules of external and internal governance. The budget of public universities is fully funded by the government. Being the financial master, the Government treats public universities as if they are a sub-unit of the Ministry Of Higher Education and Ministry of Finance.

In addition to the legal powers of the Ministry Of Higher Education to intervene into the affairs of the public universities, the decades since 1971 have seen the imposition of "extra legal" administrative circulars, directives, schemes, instructions and procedures on public universities by the Prime Minister's Department, Public Services Department, and Economic Planning Unit Of the Prime Minister's Department. The public universities are also expected to deliver according to the key performance index set by the government. Therefore from time to time calls are made to democratise and liberalise university governance to enable the universities to decide without external intervention. The universities insist on having autonomous powers. They seek to unshackle themselves from stifling bureaucratic procedures and to be allowed to undertake academic, intellectual and research initiatives in order to attract, retain and produce scholars of high repute. To answer to the above mentioned calls, the Universities and University Colleges Act was amended from time to time.

6.COMMERCIALISATION OF ACADEMIC ACTIVITIES

The amendment of the UUCA in 1996 was designed towards corporatisation of public universities and commercialisation of academic activities. The said amendment allows the public universities to function like a corporate body with commercial activities. The amendment replaced the old University Council with a Board of Directors; the old Senate was downsized; and the Vice Chancellors were vested with more powers to appoint their own Senate. The old Senate which consisted of all professors and elected faculty



representatives was replaced with a forty member Senate with the Vice-Chancellor as chairman, all Deputy Vice-Chancellors, Deans of Faculties, Directors of academic and research centres, and not more than 20 Professors who are appointed by the Vicechancellors. The downsizing was done to enable the universities to move faster in decision making processes. Under the said commercialisation plan, the public universities are expected to generate their own income by commercialising their academic activities such as research and development. Research projects are now geared towards commercial finding. Research grants are extended to finance the commercialisation expenses such as the patenting and promotional cost of the research products .Academic courses leading to degrees for both under graduates and post gradutes are being offered on commercial basis in addition to the regular ones. Public universities are expected to raise 30% of their annual budget after ten years of the said amendment but the said expectation was far from being fulfilled. This is mainly due to the fact that it is not an easy task to inculcate a business culture in a public university.

7. THE UNIVERSITY AND UNIVERSTY COLLEGES (AMENDMENT) ACT 2009 (UUCAA)

Malaysia in its effort to be the hub of higher education excellence in Southeast Asia has formulated a National Education Action Plan from 2007-2020 to achieve world class status for its universities. Several reports have been published recently that focus on enabling Malaysian universities to be the leading universities in Southeast Asian Higher education. The reports are as follows:

- i.The Report by The Committee To Study, Review and Make Recommendations Concerning The Development and Direction Of Higher Education In Malaysia.(MOHE 2006))
- ii.The Transformation Of Higher Education Document (MOHE 2007)
- iii.The National Higher Education Action Plan (2007-2010)

The document on the action plan deals with the proposed transformation during 2007-2010, as laid down by the National Higher Education Strategic Plan. The action plan contains critical implementation mechanism. Strengthening of higher learning institutions is high on the agenda. The ministry perceived that one of the modes in strengthening higher learning institutions is by democratising and liberalising public university governance so as to allow the public universities to conduct themselves in a more democratic and liberal manner with less interference from the Ministry Of Higher Education. In this case the



government found that it is necessary for UUCA to be reviewed again. In 2006 a committee was formed to review the UUCA .The committee undertook extensive consultation with many groups of people including Members Of Parliament, senior officers of the Ministry of Higher Education, Chairmen of the university Board Of Directors, Vice chancellors, Deputy Vice Chancellors, staff associations and student representatives. After consultation the committee was faced with three proposal as follows:

To retain UUCA in its present form in order to preserve peace and order on campuses and to prevent our youth from being exploited by political parties.

To repeal UUCA and to replace it lock , stock and barrel with a new University Act.

To retain the wholesome part of UUCA but bring necessary changes to provisions that have become out of tune with the times.

After considering the above mentioned proposals, the Ministry of Higher Education, adopted the third recommendation. The Ministry is fully aware that the 20 public universities in Malaysia have to achieve their respective mission and vision besides having to conform to the National Education Policy .Thus it is necessary for these universities to be vested with adequate powers that will enable them to achieve their respective goals. Increasing the universities' budget by the Ministry is not the only tool in breaking the barrier towards excellent performance as the Key Performance index of a university is measured from various angles such as the employees output, the students' academic achievement, and the universities governance. This means that an excellent output would not be made possible without joint efforts of the various university machineries. Therefore it is highly necessary for public universities to be empowered with the ability to decide not only independently but in a more democratic manner with minimal interference of the Ministry especially in the academic decision making process as the universities academic performance to a large extent serves as an indication of the universities' achievement. Therefore the powers of the Senate had to be reviewed; the employees welfare needed to be addressed in order to attract new staff and retain existing ones; student rights needed to be enhanced in order to attract both local and international students; and the universities needed to be encouraged to promote research and development and to commercialise their research product to generate income to a target set by the Ministry . The Ministry felt that public universities needed to be governed democratically with a liberal approach to enable them to function more effectively. Thus the democratisation and liberalisation approach is embedded in the provisions of UUCA with the main thrust to:

PROMOTE good governance



IMPROVE employees welfare

PROVIDE student rights and responsibilities

PROMOTE research , commercialisation and internationalisation

Out of 109 provisions in the UUCA, 61 provisions were amended, deleted or inserted.

8. UUCA A- PROVISIONS TO PROMOTE GOOD GOVERNANCE

In order to promote good governance for public universities the UUCA was amended in 2009 by :

PUTTING IN PLACE mandatory consultative process for all appointments to top university posts

IMPROVING university autonomy by transferring some ministerial powers to the university management

ENHANCING the role of the University Senate as the primary academic body of the university

STRENGTHENING the role of the University Senate as the primary academic body of the university

DEMARCATING clearly the powers and functions of the University Board , the Senate and the Vice Chancellors

PROVIDING for non-judicial dispute resolution mechanism for university authorities

GIVING representation to staff and students on some committees of the University Board

The amendments seeking to promote good governance may be viewed under the following heads:

9. UUCA – POWERS OF THE YANG DI PERTUAN AGONG (HRH THE KING)

The power to incorporate a University is vested in the Yang di Pertuan Agong under section 6-7 of the UUCA. The Yang di Pertuan Agong may now amend, vary or revoke an incorporation order : Section. 6 UUCA [Section. 6 (1A) UUCA].

The power to establish University campuses is transferred from the Yang di Pertuan Agong to the Minister : Section. 7 UUCA [Sec .12 UUCA] .

The Yang di Pertuan Agong’s power to create Faculties and Department is transferred to the Senate : Section. 26 (1)(iv)UUCA [Sec. 12(1)(d) and Schedule 1,Section 17(2A) UUCA]



The Yang di Pertuan Agong may exempt Universities, in whole or in part, from the provision of UUCA: Section. 25UUCAA [Section. 26 UUCA].

In order to upgrade University Colleges to Universities, the Yang di Pertuan Agong may dissolve a University College: Section 19UUCAA [Section 20UUCA]

10. UUCA - AMENDMENTS TO THE POWERS OF MINISTER OF HIGHER EDUCATION

The Amendment Act seeks to put in place a number of consultative processes as a pre-condition to the making of decisions on key university appointments. Appointment of the chairman and members of the Board, the Vice- Chancellors and Director of campuses by the Minister shall be subject to a mandatory search processes by a Committee appointed by the Minister : Section 3 and 26(c)(i) UUCA [New Section 4A UUCA] In line with the move towards greater autonomy, many powers of the Minister over students are transferred to the Board or to the Vice-Chancellors. For example, student disciplinary appeals, formerly heard by minister, shall now be heard by a Committee of the Board: Section 15UUCAA [Section 16B (4) UUCA]. Some sections of the UUCA like sections 15 A(3), 15D(7) and 15D(8) which gave the Minister “absolute discretion” over many student matters have been deleted or amended.

Heads of Branch Campuses shall be appointed by the minister after consultation with the Vice-chancellor : Section 26(d)UUCAA.

Minister is now empowered to authorize the setting up of Campuses abroad : Section 7UUCAA

11. UUCA - AMENDMENTS RELATING TO THE ESTABLISHMENT OF PUBLIC UNIVERSITIES.

At present many ministries are establishing their own universities under their own laws. This trend needs to be arrested in order to underline the Ministry Of Higher Education’s specialised role in higher education. Henceforth public universities shall be established only under sections 4, 5, 18, 21 and 22 UUCA. But this amendment does not affect the status of Universities like UiTM , IIUM or any other institution like the Academy of National Art and the Institute of Teachers’ Education. This amendment also does not apply to private universities established under Act 555.

12. UUCA - AMENDMENTS RELATING TO UNIVERSITY BOARD OF DIRECTORS.



The previous mention of the University Board of Director as an “executive body” is deleted. The board shall now be the governing , policy making and monitoring body : Section 26(j)UUCAA. This will reduce the possibilities of conflicts with the Vice Chancellor whose role as the Chief Executive Officer is acknowledged. Section 26(c)(iii) UUCAA.

Previously considerable overlap existed between powers of the Board and powers of Senate. The Amendment Act in Section 26(b)(ii), 26(j) and 26(l)(iv) meticulously creates three baskets of powers:

- Powers and functions of the Board
- Powers and function of the Senate
- Joint Powers and functions

The Board’s composition is increased from eight to eleven. The Board shall consist of a Chairman; the Vice Chancellor; two officers of the public service; one representative of the community where the University is located; three private sector representative (increased from one to three); an alumnus; and one other person appointed by the minister. In addition a Professor of the University, elected by the Senate, shall be a member of the Board to voice academic perspectives: Section 26 (g)UUCAA

Staff members aggrieved by promotion or appointment decision may appeal to the Board: Section 26 (b) (i) (C)UUCAA

On purely academic matters, unless they involve financial allocation, the Senate is given primacy over the Board.

On academic matters the Board can transmit its opinion to the Senate but the Senate has the last say: Section 26 (j) UUCAA [Section 16 (2)]UUCA

Committees of the Board, including the Employee Welfare Committee and the Student Welfare Committee are provided for. Employees and student shall have representation on these committees: Section 26 (k), 26(p), 26(q) UUCAA

13. AMENDMENTS RELATING TO THE VICE CHANCELLOR

The Vice Chancellor is redefined as the Chief Executive Officer who is responsible for the overall administrative, academic and management functions of the University: Section 26 (c)(iii)UUCAA

Appointment of Deans and Head of Departments by the Vice Chancellor shall be subject to mandatory process of consultation with the Faculty or Department concerned. The



Board shall be informed of the Vice Chancellor's choice to promote openness and transparency. Section 26 (n) UUCAA

The Vice Chancellor's powers as the student disciplinary authority are clarified and subjected to extensive procedural safeguard to students: Section 15UUCAA [Section 16B UUCA]

In addition to campuses set up by the Minister, the Vice Chancellor may temporarily, and with the permission of the Board, use other areas, building etc. for the purpose of the University. Section 7UUCAA [Section 12 (3)UUCA] Every university shall have Management committee to advise the Vice Chancellor : Section 26(m) UUCAA

14. UUCAA - AMENDMENTS RELATING TO THE SENATE

Composition of the Senate is democratized. The twenty Professors now appointed by the Vice Chancellors shall henceforth be elected by other Professors and associate Professors : Section 26 (l) (i) (B)UUCAA

One Of the Professors elected to the Senate will be further elected by the Senate to sit on the University Board.: Section 26 (g)UUCAA [Section 13 (1) (e)UUCA]

The functions of the Senate are specified in detail in order to avoid conflicts with the Board: Section 26 (l) (iv) UUCAA

Senate's assent is needed before statutes on academic matters can be framed: Section 26 (t)UUCAA

On purely academic matters, unless they involve financial allocation, the senate is given primacy over the Board. On academic matters the Board can transmit its opinion to the Senate but the senate has the last say. Section 26 (j) UUCAA [Section 16 (2) UUCA]

15. UUCAA - AMENDMENTS RELATING TO OTHER OFFICERS OF THE UNIVERSITY

Section 14 (2) of the first Schedule of UUCA is amended to provide that the Registrar shall be the secretary to the Board: Section 26 (h) (ii)UUCAA

The Board shall appoint a Legal advisor : Section 26 (e) UUCAA

The Vice Chancellor shall have a Management Committee to advise him: section 26 (f), 26(m)UUCAA.

16. UUCAA - DISPUTES RESOLUTION PANELS

Any dispute between University authorities or between officers shall be resolved by a Dispute Resolution Panel appointed by the Minister: Section 26 (r)UUCAA

**17. UUCA – STAFF MATTERS****Appointments And Promotions**

The amendments provide that the Employees aggrieved by promotion or appointment decisions may appeal to the Board: Section 26 (b) (i) (c) UUCA[Section 4 (1) (m) UUCA]

Staff Secondment And Transfer

The Amendment Act authorises the Minister to permit consenting University staff to be seconded or transferred to other institutions. Section 3UUCA [Section 4BUUCA].This will facilitate sharing of expertise among centres of excellence.

Employee Welfare Committee .

An Employee Welfare Committee of the Board is provided for. Employees unions shall have representation on this Committee. Section 26 (p)UUCA

Right To Elect Representative To Senate

Professors and Associate Professors have been given the right to elect 20 Professors to the Senate: Section 26 (l) (i) (B)UUCA

Staff Representation on Board

A professor from the Senate shall be elected by the Senate to sit on the Board of the University to infuse the academic perspective to the deliberation of the Board : Section 26 (g)UUCA.

Appointment of Deans And Heads

In the appointment of Deans and Heads the Vice Chancellor is now required to consult with the academic staff of the faculty and Department concerned : Section 26 (n)UUCA

18. UUCA - PROVISIONS TO ENHANCE STUDENTS' RIGHTS AND RESPONSIBILITIES**Definition of Student**

A 'Student' , except in relation to Student Representative Council Elections, is redefined broadly to include a full time, part time, distance learning, off-campus, exchange and non graduating student at any stage of university education:Section 2 (d)UUCA.

Freedom Of Association



Extensive amendments are made to the Act to liberalise the Law on student Freedom. Previously student need prior permission to join any organisation outside the university. The amendment to UUCA remove the need for prior permission. Students are entitled ,individually or in groups, to associate with any society, organization youth and social organizations without the need for prior permission ; section 8UUCAA [Section 15UUCA]

However the rights of students to join any organization (including a non- governmental organization) is subject to three exceptions. Under Clause 8 students are prohibited from joining:

- political party
- an unlawful organization
- any organization specified by the minister as unsuitable for student involvement.

In naming an “unsuitable’ organization ,the minister shall consult the Board. There shall be uniformity for all Universities. The present discretion of the individual Student Affairs Department will cease to operate. Wide divergence from University to University should cease. The present minister has indicated that he will exercise his power sparingly, if at all, and only to prevent students from joining organization that may hinder their studies, endanger their life, health or morality.

The ban to join political party is still retained because of the following reasons:

Most political parties are organised along racial, religious or regional basis. Active membership of such political parties will polarise students on racial, ideological, religious or territorial grounds. This will not be conducive to the maintenance of an intellectual atmosphere of impartial, rational enquiry The universities have rights to exclude political parties from their private properties. This is not possible if student leaders are active members of political parties.

The ban on political parties is permitted by Article 10(3) of the Federal Constitution .

Students in Public Universities receive 90-94% subsidized education. It is a reasonable expectation on the part of the government that student should complete their studies in the least possible time by devoting their full time to curricular work and parents too have a similar expectation. Ban on political parties does not mean ban on political education. Many Universities have Faculties of Political Science where national and international politics are taught and imbued in an intellectual ,academic and non partisan atmosphere.



Students are allowed to participate in student democracy and to dabble in student politics as training for future participation in national politics. : First Schedule Section 48 UUCA.

Students are not forbidden from academic research and writing about national politics. The amendment Act safeguard academic research , comments and critics on academic occasions: Section 8UUCAA [Section 15 (6)UUCA]. UCCA forbids active and partisan involvement in national politics. Nearly one million public servants including Judges, civil servants, police, army, employees of statutory body and universities staff are also required to be reserved in national politics. In creating a more open and democratic atmosphere in Universities, the Ministry is mindful of the need for gradualism, for proceeding in an evolutionary or revolutionary way. Serving politician and working adults who enrol at universities to further their education may seek exemption from the Vice Chancellor to be allowed to continue their political affiliation: Section 8UUCAA [Section 15 (4)UUCA] Student interaction with politicians and political parties is allowed on academic occasions: Section 8 (6)UUCAA.

Suspension Of Student Organization

Suspension or dissolution by the Vice –Chancellor of a student organization must now be preceded by a prior hearing: Section 13 UUCAA[Section 16 (1)UUCA] Appeal to the Minister is allowed : Section13UUCAA [Section 16 (2)UUCA]

Freedom Of Speech

The scope of academic speech has been greatly expanded. Student can make statement on any academic matter on which they are engaged in study or research. They can express themselves freely at seminars and symposiums which are not organized by the three categories of forbidden organizations listed in Section 8 UUCAA[Section 15 (5) UUCA]

De-Criminalisation Of UUCA provisions

For violation of UUCA , criminal penalties were in place. This has been amended. The amendment de-criminalises the act by removing criminal penalties and substituting them with disciplinary measures by the university: Section 8, 9, 10 UUCAA.

Various provision like section 15B (1), 15B (2). 15B (3) and 15C UUCA that provide for presumption of guilt, and criminal liability even without conviction and collective criminal liability are repealed : Section 10-11 UUCAA.

Removal Of Automatic suspensions or Dismissals



The amendment removes the provisions for mandatory ,automatic suspension or expulsion of student who is charged with a criminal offence or who is convicted of an offence ,or who is detained or restricted under preventive detention or restricted residence laws. The University is given discretion to handle these cases as it sees fit depending on whether the offence is a serious criminal offence or a minor offence unrelated to academic character. Section 12UUCAA [Section 15D)UUCA]

Fundamental Right To education

The Act recognizes that education is a citizen’s fundamental right. Students under preventive laws are not automatically dismissed. They may be with the permission of the Home Minister and the permission of the Senate take examination at the detention centre: Section 12UUCAA [Section 15D(4)UUCA]

A student who is acquitted of a charge in a court of law or has served out his sentence or has been released from detention order ,has a right to return to the University and his absence through suspension cannot be taken into account in calculating the maximum period during which he is allowed to complete his studies: Section 12 UUCAA [Section 15D(7), 15(D)(8)UUCA]. If a student was suspended or excluded from Public University he has a right to enrol in a private institution. Alternatively he may, with the permission of the Minister, enrol in another public university .Section 12UUCAA [Section 15D UUCA].

The University power to revoke a degree or diploma has been greatly narrowed down and subjected to procedural safeguard for student concerned: Section 26(z)(b)UUCAA.

Fairer Disciplinary Procedures

The Amendment Act provides for fairer student disciplinary procedures , right to oral and written hearing, right to be represented by others and right to appeal: Section 15 UUCAA[Section 16BUUCA]

Postgraduate Students Enfranchised

The Act expands the electorate for students by enfranchising post-graduate students who may soon constitute up to 25% of the university population: Section 26 (z) (iv) UUCAA[First Schedule Section 48(14) UUCA]

Student Representation On Board’s Committee

Section 26(q) UUCAA provides for two student representatives on the Board’s Student Welfare Committee.

Participation In Senate Proceeding



The Senate may invite a student to attend its deliberation: Section 26 (l) (ii)UUCAA

Absolute Powers Of The Minister

Sections of UUCA like Section 15A (3), 15D (4), 15D (5), 15D (7) and 15D (8) which gave the Minister “absolute” discretion in relation to many student matters have been deleted or amended.

19. PROVISIONS TO PROMOTE RESEARCH & INTERNATIONALISATION

The Act improves private sector links with Public Universities by providing for three members from the private sector on the Board. Section 19UUCAA [Section 20UUCA]

The Act Re-define university education to include research and educational development: Section2(e) UUCAA

The Act Permits Malaysia to export its educational expertise abroad by giving power to the Minister to set up campuses in foreign countries: Section 7 UUCAA. However overseas campuses will not be subjected to UUCA: Section26(u) UUCAA .

20. LEGAL EDUCATION

Under the present legal set up In Malaysia, corporate personality belongs to the University and not to individual university faculties. The five Faculties of Law that exist in Malaysia have to work under the UUCA regime and are under the direct control of the Senate. In relation to their professional courses they are subject to the control of the Qualifying Board under the Legal Profession Act.

20. CONCLUSION

The UUCAA is indicative that the Malaysian government has committed itself considerably to liberalise public university governance . The approval of the government to allow 61 amendments of the UUCA in a single Parliament sitting reflects a liberal attitude of the government towards public universities. The UUCAA 2009 creates room for consultations, sharing of ideas and mutual feelings of trust between the government and the universities. It also signifies the government’s readiness to adapt itself to local and global trends and developments relating to higher education. The various provisions relating to participation of employees in decision making by the University reflect a democratic attitude of consultation, discussion before decision and self- government. The putting in place of provisions relating to employee and student welfare reflects the element of social responsibility. As to the commercialisation aspects, the UUCAA has left all the commercialisation provisions under the 1996 amendment untouched. In short it can be



concluded that the UUCA 2009 is moving towards liberal governance and encourage commercialisation of academic activities.. Whether this will enhance Malaysia's competitiveness and help Malaysian universities to gain world rankings remains to be seen.

End Notes:

- (1). Encyclopaedia Of Modern Asia Summary, <http://www.bookrag.com/research/malaysiaeducation-system-ema-04> (21/05/09)
- (2).Ibid.
- (3).Ibid.
- (4). Prof. Robin Middlehurt and Steve Woodfield: CASE STUDY: MALAYSIA: SUMMARY REPORT : The Role Of Transnational Private and For -Profit Provision In Meeting Global Demand for Tertiary Education: Mapping, regulation and Impact, (Report Commissioned by the Commonwealth of Learning and UNESCO.
- (5).Wikipedia, the free encyclopaedia.[http://www.en.wikipedia.org/wiki/education-in-Malaysia/p1\(31-05-09\)](http://www.en.wikipedia.org/wiki/education-in-Malaysia/p1(31-05-09))
- (6).Ibid
- (7).Ibid
- (8). Encyclopaedia Of ModernAsiaSummary,<http://www.bookrag.com/research/malaysiaeducation-system-ema-04> (21/05/09).
- (9).WAN ABDUL MAJID WAN MUDA, UNIVERSITY AUTONOMY: INTERPRETATION AND VARIATION, ASAHIL CONFERENCE, UNIVERSITY SAINS MALAYSIA.
- (10).Professor Robin Middlehurt and Steven Woodfield: CASE STUDY: MALAYSIA: SUMMARY REPORT: The Role Of Transnational, Private and For-Profit Provision In Meeting Global Demand For Tertiary Education: Mapping, Regulation and Impact.
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- (12).Encyclopaedia Of Modern Asia Summary.<http://www.bookrag.com/research/malaysiaeducation-system-ema-04> (21/05/09).
- (13).Wikipedia, the free encyclopaedia.[http://en.wikipedia.org/wiki/Education-in-Malaysia\(31-05-09\)](http://en.wikipedia.org/wiki/Education-in-Malaysia(31-05-09))



(14).WAN ABDUL MAJID WAN MUDA: UNIVERSITY AUTONOMY: INTERPRETATION AND VARIATION,ASAHIHL CONFERENCE UNIVERSITI SAINS MALAYSIA.

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2. Universities And University Colleges (Amendment) Act 2009
3. Private Higher Education Act 1996
4. National Higher Education Council Act 1996.

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5. The National Higher Education Plan 2007-2010, Putra Jaya., Ministry Of Higher Education.
6. Ministry Of Higher Education Report, The Report by Committee To Study, Review and Make Recommendations Concerning The Development and Direction of Higher Education In Malaysia, Putra Jaya: Ministry Of Higher Education
- 7.Rahimah Hj Ahmad, Jasbir Sarjit Singh and Chew Sing Buan, (1999). Malaysia: Education Quality Project Report. The World Bank.
- 8.Rahimah Hj Ahmad,1998.Educational Development and Reformation in Malaysia: Past, Present and Future. Journal Of Educational Administration 36(5).
- 9.Report by the Committee to Review and Amend the Universities and University Colleges Act 1971: Putra Jaya, Ministry Of Higher Education.
- 10.Minutes Of Meeting of The Committee To Review And Amend The Universities And University Colleges Act 1971,Putra Jaya, Ministry Of Higher Education.