



HUMAN RIGHTS

LAW International, Malaysian and Islamic Perspectives

Edited by
Abdul Ghafur Hamid
@ Khin Maung Sein

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Human Rights Law: International, Malaysian and Islamic Perspectives

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Abdul Ghafur Hamid @ Khin Maung Sein

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Editor's Introduction

The world is changing dramatically in the present age of the Internet, rapid communication and movement of persons, and the free flow of messages and ideas across international borders. Ordinary people these days increasingly know more about their fundamental rights. As a result, human rights are not only at the forefront of concerns today for prosecutors and criminal lawyers but also for multinational corporations, businessmen, trade unions, workers in the global economy, and even for the man on the street. The world has become a global village and what happens to individuals in one country often has profound impact on those in other countries.

Whatever the rationale behind the origin of human rights is – be it the command of God Almighty, the theory of natural law, or the idea of a “higher” norm that dictates States to observe the rights of individuals – the subject of human rights has become one of the top priorities for every State in the world. This is truly reflective of the commitment of States proclaimed during the World Conference on Human Rights in 1993 to the effect that “Human rights and fundamental freedoms are the birthright of all human beings; their protection and promotion is the first responsibility of Governments.”

The idea of embarking on a research project exploring the width and depth of “International Human Rights Law” originated during brainstorming sessions of the International Law and Maritime Affairs (ILMA) Research Unit of the Ahmad Ibrahim Faculty of Laws, International Islamic University Malaysia. The ILMA Research Unit was established in the Faculty with the primary objective of “promoting interdisciplinary research and consultancy works on specialized areas of international law, including, but not limited to, international human rights law, international trade law, and maritime law.” Due to current trends towards opening up more democratic rights globally as well as locally, members of the Unit decided to take on the subject of human rights and to structure its exploration in such a way that it begins with international human rights law, continues with the Malaysian position in respect of human rights, and ends with the Islamic perspective of human rights, which is the niche area of the University.

The work has accordingly been divided into three parts and consists of 24 chapters. Part I evaluates the nature, scope and effectiveness of the

international legal framework for human rights. The first three chapters deal with the genesis and perspectives of human rights, sources, and the issue of enforcement, respectively. The other chapters give an in-depth analysis of selected fundamental human rights. Within the space constraints, it was necessary to isolate certain rights for consideration. The jurisprudence of the Human Rights Committee and the European Court of Human Rights influenced the selection of rights with the emphasis on rights most commonly claimed by individuals. This is also the main reason why civil and political rights take priority over others. Elements of economic, social and cultural rights and collective rights are, nevertheless, considered where possible.

Part II is entitled "Malaysia and Human Rights: Traditions versus Universality". Originally conceived as a comprehensive analysis of the Malaysian position in relation to the application of international human rights law and the contemporary human rights issues in Malaysia, the contributors who responded have tried their best to present a picture of Malaysia in terms of human rights. It must be noted, however, that after finalizing the chapters, the Government of Malaysia has introduced a number of reforms on human rights, inclusive of announcements repealing the Internal Security Act and other laws restricting the right to liberty, amending laws restricting freedom of assembly, and amending section 15 of the Universities and University Colleges Act 1975 in order that university students can enjoy their civil and political rights. All these proactive movements by the Government towards respecting fundamental human rights in Malaysia are to be warmly welcomed.

The final Part of the work looks at human rights from the Islamic perspective. In other words, this Part elaborates the position of *Shari'ah* (Islamic law) in respect of human rights. The contributors are mostly scholars from the Islamic Law Department of the Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia. The Part begins with chapters dealing respectively with the Islamic concept of human rights, a comparison between Islamic human rights and international human rights instruments and basic human rights in Islam. They are followed by an analysis of "Mechanisms for Protection and Enforcement of Human Rights in Islam". The later chapters consider the hotly debated issues concerning criminal punishment under Islamic law and women's rights, terrorism, jihad, freedom of religion, apostasy and blasphemy from an Islamic law perspective.

This work is designed to present the three aspects of human rights law in a clear and accessible fashion, addressing a number of key questions. Although structured to form a coherent exposition of human rights law, each chapter can be read as a self-contained paper, reflecting the distinct

perspective of its contributor(s). It aims to be a resource of value to all those interested in exploring and studying human rights law.

I am greatly indebted to all those who so readily agreed to contribute chapters to this work. My sincere appreciation also goes to those at Sweet & Maxwell Asia for their excellent job done. It is hoped that this volume will encourage debate and dialogue on human rights law, be that international, Malaysian or Islamic.

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January 1, 2012

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Chapter Seven

The Right to Equality and Non-Discrimination

Haniff Ahamat

7.1 INTRODUCTION

The right to equality and non-discrimination are important components of the United Nations (UN) human rights system. Besides being epitomised in a distinct set of rights, the right to equality and non-discrimination reinforce other human rights and freedoms whether they are civil and political or economic, social and cultural. Within such structure, human rights are conferred on all persons regardless of religion, race, ethnic, language, gender and other statuses.

Since treaties are the main sources of international human rights law, this chapter will revolve around the main UN human rights treaties: the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR), the Convention on Elimination of Discrimination Against Women (CEDAW) and the International Convention on Elimination of Racial Discrimination (ICERD).

This chapter will first discuss the relevant provisions and concepts underlying the equality and non-discrimination principles. This will be followed by a discussion of the special position of the non-discrimination principle. Then, the definition of discrimination is analysed. Such analysis will be vital as it sets the parameters for the application of the non-discrimination principle in different circumstances depending on the statuses of the person or persons discriminated against. There is emphasis on how the ICERD and CEDAW approach discrimination since the two treaties have a direct bearing on Islamic law (*Shari'ah*) and Muslims wanting to adhere to it.

Then the chapter narrows down on two important issues of non-discrimination namely affirmative action and private sector discrimination. These issues are chosen for their proximity to developing countries including Malaysia which have been struggling to maintain law and order as well as political stability, and to promote economic