

## The Relevancy of Preventive Detention in Malaysia<sup>1</sup>

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### Abstract

This paper highlights and discusses human rights from the Islamic viewpoint base on the Quran, the Cairo Declaration of Human Rights in Islam, as well as in the light of the Universal Declaration of Human Rights. It then attempts to give the moral and legal justifications for the use of preventive detention for the sake of public order in society. Thus, this paper specifically discusses preventive detention laws and will deliberate in general the application of Internal Security Act of 1960 (hereinafter referred to as "ISA") in maintaining peace and security in Malaysia. The deliberation will also be focused on other security and public order legislations which also have preventive mechanism as the ISA i.e. Restricted Residence Act 1933 (hereinafter referred to as "RRA"), Prevention Of Crime Act 1959 (hereinafter referred to as "PCA"), the Emergency (Public Order and Prevention of Crime) Ordinance No. 5 of 1969 (hereinafter referred to as "EPOPOC"), and the Dangerous Drugs (Special Preventive Measures) Act 1985. Other preventive legislations available in other jurisdictions such as India, Northern Ireland, United States and South Africa will also be highlighted to foster the indispensability of preventive detention in ensuring 'harmony' in the society. This paper will ultimately deduce whether preventive legislation is allowed in Islamic law.

### Introduction

The noblest among men are those that are noblest in their conduct, not their wealth, status or position in society.<sup>2</sup> The recurrent theme evident in the Quran is the need to be just all the time in all aspects of life. This command is non-negotiable as far as Islam is concerned. In transactions for example, there must be transparency and fair dealings. That is why Islam emphasizes trade but prohibited usury.<sup>3</sup> It is by trade (barter) and negotiation on accepted and agreed considerations that are fair and just that will ensure harmonious relations among nations and tribes. It is, therefore, important to everyone to be humane and just, and to render faithfully everyone his due. Thus the mother of Islamic law is to act fairly and justly. Here are just some verses in the Holy Quran to emphasize that being just is central and the recurrent theme in Islam;

O mankind! We created you from a single (pair) of a male and female, and made you into nations and tribes that ye may know each other (and be good to one another). The noblest among you is the best in conduct.<sup>4</sup>

O ye who believe! Stand out firmly for Allah as witnesses to fair dealings; and let not the hatred of others to you make you swerve to wrong and depart from justice; and be just for that is next to piety; and fear Allah for Allah is well informed with all that ye do.<sup>5</sup>

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<sup>2</sup> See Article 1 & 19 of the Cairo Declaration on Human Rights

<sup>3</sup> Quran chapter 2 (sura al-baqarah) verse 275; See also the conference proceedings of Susan Betz Jitomir, J.D., *A Comparative Analysis of Islamic Law and the Law of the United States: The Legal Approach to Interest as a Source of Profit in Banking*. This paper was presented in the International Islamic Banking Conference, 'From Money Lenders to Bankers: Evolution of Islamic Banking in relation to Judeo-Christian and Oriental Banking Traditions', 9<sup>th</sup>-10<sup>th</sup> September 2003, Monash Prato Centre, Prato, Italy – ISBN: 983-2939-00-3; See also Article 14 of the Cairo Declaration

<sup>4</sup> Chapter 49: sura al-hujurat [the chambers] in verse 13

O ye who believe! Stand out firmly for justice as witness to Allah even against yourselves or your parents or your kin, and whether it be (against) rich or poor: For Allah best protecth both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well acquainted with all that ye do.<sup>6</sup>

Allah commands justice, the doing of good and liberality to kith and kin, and He forbids all shameful deeds, and injustice and rebellion: He instructs you that you may receive admonition.<sup>7</sup>

Help ye one another in righteousness and piety, but help ye not one another in sin and rancour. Fear Allah; for Allah is strict in punishment.<sup>8</sup>

Eschew all sin, open or secret; those who earn sin will get due recompense for their 'earnings'.<sup>9</sup>

We have honoured the sons of Adam.<sup>10</sup>

Invite (all) to the way of Allah with wisdom and beautiful preaching; and argue with them in ways that are best and most gracious.<sup>11</sup>

Mankind was one single nation, and Allah sent Messengers with glad tidings and warnings, and with them He sent the Book in truth to judge between people in matters wherein they differed; but the people of the Book after the clear signs came to them did not differ among themselves except through selfish contumacy.<sup>12</sup>

And verily this Brotherhood of yours is a single Brotherhood, and I am your Lord and Cherisher, therefore fear Me. But people have cut off their affair (of unity) between them, into sects: Each party rejoices in that which is with itself.<sup>13</sup>

Mischief has appeared on land and sea because of that the hands of men have earned that (Allah) may give them a taste of some of their deeds in order that they may turn back (to do good).<sup>14</sup>

#### What Rights Are All About

Rights and duties are interdependent. Article 1 of the Mejlle al-Ahkam al 'Adilah (Code of jurisprudence) of the Ottoman Caliphate codified in 1293 A.H or 1876 A.D. states;

In view of the fact that man is social by nature, he cannot live in solitude like the other animals, but is in need of cooperation with his fellow men in order to promote an urban society. Every person, however, seeks the things which suits him and is vexed by any competition. As a result, it has been necessary to establish laws to maintain order and justice.<sup>15</sup>

Rights and duties is then a system of enforcing both order and a minimum standard of fair play known as law. Law becomes necessary to restrict the complete freedom of each individual member of the society so as to protect all other members from his carelessness, violence or dishonesty. In return, the individual is protected from the carelessness, violence and dishonesty of others. A man living on his own on a desert island (if he can own one) can behave exactly as he likes. The moment there is another man, the two men must then come to some kind of understanding or agreement how they could get along together: They acquire rights and duties against each other. Laws are needed to protect us from anti-social behaviour of a few bullies, crooks, confidence tricksters and dangerous cranks. If we had no laws and no punishments, each of us would be free to push

<sup>5</sup> Chapter 5: sura al-maidah [the repast] verse 8

<sup>6</sup> Chapter 4: al-nisa [the women] verse 135

<sup>7</sup> Chapter 16: sura al-nahl [the bees] verse 90

<sup>8</sup> Chapter 4: sura al-maidah [the repast] in verse 2

<sup>9</sup> Chapter 6: sura al-an 'am [the cattle] verse 120

<sup>10</sup> Al-Quran - Chapter 17: sura al-isra' [the night journey/ children of Israel] in verse 70; See Article 2, 4 & 11 of the Cairo Declaration on Human Rights

<sup>11</sup> Chapter 16: sura al-nahl [bees] in verse 125

<sup>12</sup> Chapter 2: sura al-baqarah [the heifer] in verse 213; See Article 11 of the Cairo Declaration on Human Rights

<sup>13</sup> Chapter 23: sura al-mu'minin [the believers] verse 52 and 53; A similar verse in chapter 21: sura al-anbiya [the prophets] in verse 92 and

<sup>14</sup> See Article 11 of the Cairo Declaration on Human Rights

<sup>15</sup> Chapter 30: sura al-rum (the Romans) verse 41

Cited by Mahamassani, S. (1961) *Falsafat Al-Tashri Fi Al-Islam (The Philosophy of Jurisprudence in Islam)*, translated by Farhat J. Ziadeh, E.J. Brill, Leiden, Netherlands Mahamassani S.(1961) at pg 3; See also Islahi, Amin Ahsan (2000) *Islamic Law: Concept and Codification*, at pg 92, Islamic Publications Ltd, Lahore, Pakistan.

and bully our fellow citizens, and, which may be thought more important, our fellow citizens would be free to push and bully us. The law takes away some of our personal freedom, but in return it gives us most of our protection.

### Comprehensive Nature of Human Rights

Rights should be looked in a wider perspective, and not limited only within the administration of criminal justice. An employee should not be dismissed by his employer without just cause or excuse, and the employees are entitled to just and favourable terms and conditions of work and to protection against termination and or retrenchment.<sup>16</sup> Tax on a person's income by the State should not be punitive because he cannot pay it within time. A person should also not be allowed to freely communicate his infectious disease to the public.<sup>17</sup> Rights among other things should also relate to education<sup>18</sup>, decent health and living conditions, or user-friendly environment<sup>19</sup>

It is a universal consensus to see that everyone gets justice and is fairly treated; a matter of common sense. Article 1 Universal Declaration on Human Rights UDHR states that *'...all human beings are born free and equal in dignity and rights...and should act towards one another in a spirit of brotherhood'*, and Article 3 UDHR states that *'everyone has the right to life, liberty and security of person'*, and in Article 7 UDHR, *'all persons ...are equal before the law and are entitled... to equal protection of the law.'* Article 5 UDHR provides that *'no one shall be subjected to torture or to cruel, inhuman, or degrading treatment or punishment'*.<sup>20</sup> Prophet Muhamad (peace be upon him) once left a prisoner in the care of a certain individual and ordered the latter to care for and show respect to the detainee, and thereafter, often visited the man and inquired after the prisoner's welfare. Ali ibn Abi Talib used to make surprise visits to prison in order to inspect its condition and listen to the inmates' complaints.<sup>21</sup>

Article 9<sup>22</sup> UDHR prohibits arbitrary arrest, detention or exile. Article 10 UDHR states that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal against any criminal allegation made against him. However, Article 8 of UDHR also recognizes that a person's right is that granted by the constitution and what is required is a competent tribunal to see that he has not been wronged. These rights are innate to all persons, indispensable and non-negotiable is not an issue. Suffice to say that all rights must be exercised responsibly, and no arbitrary (or unbecoming) exercise of those rights can be allowed in that all human beings are equal in dignity and rights, and should act towards one another in a spirit of brotherhood.<sup>23</sup> When others are paying income tax, it is, therefore, not right that some persons should be allowed to leave the country so that he may for 'good' evade paying or delaying paying tax.<sup>24</sup> Thus, an offender cannot be allowed to escape prosecution by leaving the country.<sup>25</sup> In other words, no person shall be deprived of his personal liberty save in accordance with laws.<sup>26</sup> Article 15 of the Cairo Declaration of Human Rights in Islam for example, also provides that *'confiscation and seizure of property is prohibited except for a necessity dictated by law'*.<sup>27</sup> Likewise, Article 149(1)(f)<sup>28</sup> of the Malaysian Federal Constitution provides that if an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation which is prejudicial to public order in, or security of the Federation or any part thereof, any provision of that law designed to stop or prevent that action is valid, notwithstanding that it is inconsistent with fundamental liberties.<sup>29</sup> In the case of Council of Civil Service Unions & Ors v Minister for the Civil Service,<sup>30</sup> Lord Frazer espoused as follows:

<sup>16</sup> See section 20 of the Industrial Relations Act 1967 & the Employment Act 1955; Article 23 UDHR; See Article 13 of the Cairo Declaration on Human Rights

<sup>17</sup> See section 16, Prevention and Control of Infectious Diseases Act 1988

<sup>18</sup> Article 26 UDHR; See Article 7 & 9 of the Cairo Declaration on Human Rights

<sup>19</sup> Article 25 UDHR; See Article 3(b) & 17 of the Cairo Declaration on Human Rights

<sup>20</sup> See Article 5 - 12 of the Malaysian Federal Constitution; See also Article 11(a) of the Cairo Declaration on Human Rights.

<sup>21</sup> Ibn Hazm, al-Muhalla, vol. 11, at 141 - cited by Taha J. al- Alwani, "The Rights of the Accused in Islam" pg 348-364 at 360, The American Journal of Social Sciences, volume 11, Fall 1994, Number 3

<sup>22</sup> See Article 20 of the Cairo Declaration on Human Rights

<sup>23</sup> Article 1 UDHR

<sup>24</sup> Article 13(2) UDHR

<sup>25</sup> Article 14(2) UDHR; See Article 12 of the Cairo Declaration on Human Rights

<sup>26</sup> See Article 5, 149 & 150 of the Federal Constitution. See also Article 22(d) & 24 of the Cairo Declaration on Human Rights

<sup>27</sup> See also the Malaysian laws (a) Dangerous Drugs (Forfeiture of Property) Act 1988, and (b) Money Laundering Act 2001

<sup>28</sup> See also Article 150 of the Malaysian Federal Constitution - laws may be made during emergency even when Parliament has been suspended.

<sup>29</sup> Article 5 (the liberty of the person), 9 (the prohibition of banishment and freedom of movement), 10 (the freedom of speech, assembly and association), and 13 (the right to property) of the Malaysian Federal Constitution; Article 20 of the Cairo Declaration on Human rights states that the personal liberty of a person should not be done without legitimate reason (save in accordance with law). Article 24 of the Cairo Declaration states that the rights and freedoms stipulated in the Declaration are subject to the Islamic shariah.

<sup>30</sup> [1985] 1 AC 374

Those who are responsible for the national security must be the sole judges of what the national security requires. It would be obvious undesirable that such matters should be made that subject of evidence in a court law or otherwise discussed in public.

The same is the position in the case of Mohamad Ezam bin Mohd Noor v Ketua Polis Negara (and 4 other appeals)<sup>31</sup> which stated:

The executive, by virtue of its responsibilities, has to be the sole judge of what the national security requires.

### Preventive Detention

Although a person's personal liberty is generally guaranteed, there are certain things that he cannot do without impunity: If one were to act unbecomingly, his rights are construed as forfeited. The point is that a person has a duty to ensure that he should not exercise his rights to the detriment of other person's right or against the accepted social order or prejudicial to public order. Article 29(2) UDHR sums up by stating that 'in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society (my emphasis).'<sup>32</sup>

### Internal Security Act 1960

The ISA was enacted in 1960 as Act No.18 of 1960 (revised on 1<sup>st</sup> January 1972 as Laws of Malaysia Act 82). It replaced the Emergency Regulations 1948 (Ordinance No.10/1948). The 1948 Regulations consolidated and simultaneously repealed the earlier emergency enactments. The Regulations was aimed at confronting the Malayan Communist Party that was formed in 1930 in Malaya whose object was to establish the Communist Republic of Malaya. Due to their armed struggle, the High Commissioner declared a state of emergency on 12<sup>th</sup> August 1948 (Federation of Malaya Govt. Gazette Vol.1 No.12 of 1948). The British authorities as the Colonial master in Malaya introduced preventive detention for countering communist's insurgency in the Federation of Malaya. The 1948 Regulation was repealed when the Emergency ended on 30<sup>th</sup> July 1960. In justifying the promulgation of ISA, the then Deputy Prime Minister Tun Abdul Razak said that there was still the risk of turmoil and subversion by the communists as they had not been completely eradicated despite the fact that they no longer posed a serious threat to the security of the country (House of Representatives - Parliamentary Debate, 21<sup>st</sup> June 1960). It is to be reiterated that ISA is a valid law and it is enacted by virtue of Article 149 of the Federal Constitution which provide as follows:

*(1) If an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation -*

*(a) to cause, or to cause a substantial number of citizens to fear, organised violence against persons or property; or*

*(b) to excite disaffection against the Yang di-Pertuan Agong or any Government in the Federation; or*

*(c) to promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence; or*

*(d) to procure the alteration, otherwise than by lawful means, of anything by law established; or*

*(e) which is prejudicial to the maintenance or the functioning of any supply or service to the public or any class of the public in the Federation or any part thereof; or*

*(f) which is prejudicial to public order in, or the security of, the Federation or any part thereof, any provision of that law designed to stop or prevent that action is valid notwithstanding that it is inconsistent with any of the provisions of Article 5, 9, 10 or 13, or would apart from this Article be outside the legislative power of Parliament; and Article 79 shall not apply to a Bill for such an Act or any amendment to such a Bill.*

The law enacted under article 149 is valid even though it is inconsistent with articles 5,9, 10 or 13 of the Federal Constitution. Under the ISA, the Minister by virtue of section 8 of the Act can issue a detention order for certain period of not exceeding

<sup>31</sup> [2002]AMR 4053

<sup>32</sup> See also Article 2(a) & (d), 22(a) & (d) of the Cairo Declaration on Human rights; See for examples the Malaysian Preventive laws on (a) Dangerous Drugs (Special Preventive Measures) Act 1985, (b) Internal Security Act 1960 – both were enacted under Article 149 of the Federal Constitution, and (c) The Emergency Ordinance (Public Order and Prevention of Crime) No. 5 1969 – enacted under Article 150 of the Federal Constitution

two years. The detention order can be extended for a period of not more than two years at a time. It is to be emphasized that the issuance of detention order is conditioned by the Minister's satisfaction that the detention is necessary to prevent any person from committing any act, which is deemed to be prejudicial to the order or security of the country. Besides that, section 73 of the Act allows any police officer to arrest and detain any person, while the investigation is carried out, up to 60 days without an order for detention under section 8. As a safeguard, the police officer concerned must satisfy that: -

- a) that there are grounds which would justify his detention under section 8; and
- (b) that he has acted or is about to act or is likely to act in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof.<sup>33</sup>

Normally, before any person is detained under the Minister's order under section 8 of the ISA, the police under section 73(1) of the Act will arrest him. The police while arresting the person must believe that the individual's actions are necessary in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof.<sup>34</sup> Contrary to general belief that section 8 is used arbitrarily, any detention order under section 8 must be carried out accordingly. The principle was expounded in the hallmark case of Mohamad Ezam bin Mohd Noor v Ketua Polis Negara (and 4 other appeals)<sup>35</sup>. The case envisaged that detention made under section 8 which go against the procedure and object of section 8 may be deemed as invalid. In addition thereto, the police can detain the person up to 60 days for investigation. The detention must be carried out in accordance with section 73 (3) of the Act. Section 73 (3) provides that:

*Any person arrested under this section may be detained for a period not exceeding sixty days without an order of detention having been made in respect of him under section 8:*

*Provided that -*

- (a) *he shall not be detained for more than twenty-four hours except with the authority of a police officer of or above the rank of Inspector;*
- (b) *he shall not be detained for more than forty-eight hours except with the authority of a police officer of or above the rank of Assistant Superintendent; and*
- (c) *he shall not be detained for more than thirty days unless a police officer of or above the rank of Deputy Superintendent has reported the circumstances of the arrest and detention to the Inspector General or to a police officer designated by the Inspector General in that behalf, who shall forthwith report the same to the Minister.*

After investigation is carried out under section 73(1) of the ISA, the investigation report is forwarded to the Minister. The Home Minister will decide consider whether the detention (or restriction) is necessary considering whether the person arrested and in police custody has in any manner acted prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof. The other safeguard that still remains intact to a detainee is the right to *habeas corpus*. Article 5 (2) of the Federal Constitution incorporates remedy of *habeas corpus* into the Constitution;

Where complaint is made to a High Court or any Judge thereof that a person is being unlawfully detained the court shall inquire into the complaint, and unless satisfied that the detention is lawful, shall order him to be produced before the court and release him.

Under the ISA every detainee has the right to appear before the Advisory Board within 3 months after the date of representation received by the Advisory Board. Representation right is guaranteed under the Act and article 151 of the Federal Constitution. Article which is as follows:

1) *Where any law or ordinance made or promulgated in pursuance of this Part provides for preventive detention -*

(a) *the authority on whose order any person is detained under that law or ordinance shall, as soon as may be, inform him of the grounds for his detention and, subject to Clause (3), the allegations of fact on which the order is based, and shall give him the opportunity of making representations against the order as soon as may be;*

(b) *no citizen shall continue to be detained under that law or ordinance unless an advisory board constituted as mentioned in Clause (2) has considered any representations made by him under paragraph (a) and made recommendations thereon to the Yang di-Pertuan Agong within three months of receiving such representations, or within such longer period as the Yang di-Pertuan Agong may allow.*

<sup>33</sup> section 73(1) of the Internal Security Act 1960

<sup>34</sup> Section 8(1) of the Internal Security Act 1960.

<sup>35</sup> [2002]AMR 4053

(2) An advisory board constituted for the purpose of this Article shall consist of a chairman, who shall be appointed by the Yang di-Pertuan Agong and who shall be or have been, or be qualified to be, a judge of the Federal Court, the Court of Appeal or a High Court, or shall before Malaysia Day have been a judge of the Supreme Court, and two other members who shall be appointed by the Yang di-Pertuan Agong.

Upon hearing the representation, the Advisory Board will report to the Yang Dipertuan Agong (YDPA) with its recommendations with regard to the order made by the Minister. The YDPA will determine the recommendations by the Board and consent to any decision made by the Board. In addition to that, detention order against ISA detainee can be reviewed from time to time. Under the ISA the power of review is once within six months before the order is over. It can be seen that by virtue of article 151(2), it is misleading to say that the ISA is an Act that allows 'detention without trial' since there is a tribunal of fact established and presided by three persons to look into the representation of the detainee. This is coupled with the mandatory provision to review his case while the detention order is in force for possible early release. Thus, the investigating papers or report need to be forwarded to the Home Minister coupled with a further safeguard that the recommendations of the Advisory Board to His Excellency pursuant to the detainee's representation only ensures that information are made objectively and accountably. In other words, there is a kind of revision to look into the propriety of the detention.

#### Difference Between ISA And Other Preventive Legislations

Save the Prevention of Crime Act 1959, the procedures of other preventive laws on *security and public order such the Restricted Residence Act 1933 (RRA)*, the Emergency Ordinances (Public Order and Prevention of Crime) 1969, and the Dangerous Drugs (Special Preventive Measures) Act 1985 is typically the same. The only difference is their purpose for every legislations on security and public order in Malaysia be it ISA, RRA, PCA or EPOPOC have different applications, for different purposes and intention.

The ISA is enacted under article 149 of the Federal Constitution which states that any laws introduced for the purpose of curbing any activities that prejudicial to the security of the country is valid even though it contravenes with article 5,9, 10 or 13 of the Federal Constitution which guarantees rights and fundamental liberties. In this regard, Parliament takes cognizant of security of the country more than individual freedom. Internal security and public order cannot be compromised at the expense of individual freedom. It is reiterated that ISA succeeds thus far to maintain harmony and order in Malaysia. The Government is responsible to put off any activities that are subversive and prejudicial to the security of the country. For examples terrorist activities by *Kumpulan Jemaah Islamiyah (JI)* or *Kumpulan Mujahiddin Malaysia (KMM)* whereby upon credible information, it is noted that the groups can pose threat to the security of the country through their intention to overthrow the legitimate government chosen by people. The threat must be averted before it becomes worse. The government has a paramount and the inherent duty to ensure that no one acts in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof.

The RRA is an Act relating to the making and enforcement of orders regarding residence in and exclusion from certain areas. It is intended to exclude any person who carries out activities that threaten public order. The RRA is invariably used on any person who is *involved in smuggling, immoral crimes, extremism and criminal syndicates* (emphasis added). The activities can be curtailed through this legislation and maintenance of peace and security in that area can be restored. RRA differs from ISA because the Minister under RRA may by order direct that any person named in the order shall be placed under police supervision for any period not exceeding five years and may renew any such order for a further period or periods not exceeding one year at any one time. In other words, the person concerned cannot leave the place without prior approval from state police chief. RRA differs with ISA in the sense that in RRA, the police only act in accordance with the warrant of arrest issued by the Minister.

The Prevention of Crime Act 1959 (PCA) is an Act to provide for the more effectual prevention of crime in West Malaysia and *for the control of criminals, members of secret societies and other undesirable persons, and for matters incidental thereto* (emphasis added). PCA provide power to the Ministers to inscribe the names of the criminal in registry of criminal directory. Usually repeated offenders about to leave prison are placed on Police supervision under this Act. The registrable persons are subject to police supervision with strict conditions and other restrictions in order to monitor them from committing any crimes. However, PCA is only applicable in West Malaysia. Under the PCA, registered persons are detained and brought before the Magistrate for an inquiry before putting him under the supervision of police.

The Emergency (Public Order and Prevention of Crime) Ordinance No. 5 of 1969 was promulgated for securing public order, the suppression of violence and prevention of crimes involving violence. The Emergency Ordinance (EPOPOC) is an Ordinance aim at curtailing discordance and tension between races as happened in 1969. The ordinance is still relevant and effective to prevent any person who is involved directly in serious crimes or in organized crimes. Detention order under EPOPOC is similar as provided for in ISA. This Ordinance had also been used to arrest and detain suspected drug traffickers and drug financiers prior to the promulgation of the Dangerous Drugs (Special Preventive Measures) Act 1985. The question

whether a person suspected of being engaged in drug trafficking, may be legally detained under section 4(1) of the Ordinance was resolved when the Federal Court hearing three appeals simultaneously, held that the order of detention against suspected drug-traffickers is within the scope and ambit of the Ordinance. Trafficking in drugs strikes at the very core of public order, and any person indulging in such activities must necessarily be acting in a manner prejudicial to public order.<sup>36</sup> Under the Ordinance, a person can be detained (or restricted) preventively for a period of two years only.<sup>37</sup> Under section 3(1) of the Ordinance, any police officer may, without warrant, arrest and detain pending enquiries in police custody for up to sixty days, any person whom he has reason to believe, has acted in any manner prejudicial to public order, where it is considered necessary to detain the person.<sup>38</sup>

The Dangerous Drugs (Special Preventive Measures) Act 1985 [Act 316] was passed by Parliament on 30<sup>th</sup> May 1985.<sup>39</sup> The Act was made under Article 149 (1)(f) of the Federal Constitution, which states that "if an Act of Parliament recites that action has been taken or threatened by any substantial body of persons, whether inside or outside the Federation which is prejudicial to public order in, or the security of, the Federation or any part thereof, any provision of that law designed to stop or prevent that action is valid, notwithstanding that it is inconsistent with any of the provisions of Article 5 (liberty of the person), Article 9 (prohibition of banishment, and freedom of movement), Article 10 (freedom of speech, assembly and association) or Article 13 (rights to property).<sup>40</sup> Because it is special legislation, the deprivation of a person's personal liberty and right to be tried in an open court are sanctioned constitutionally. The Act operates on the same procedures (and safeguards) like the EPOPOC and ISA. One distinctive feature is that it is meant for those who are associated or involved in dangerous drug activities. It has an extra safeguard in that the Minister will be forwarded with two reports, one from the investigating police officers and another by an Inquiry Officer who is not a police officers but a legal Officer (Federal Counsel) from the Attorney General Department seconded to the Home Ministry. It is thought that the Inquiry officer will verify and authenticate the finding of the investigating police officer. To do the tasks, the Act provides the Inquiry Officer with all the powers he needs to question any witness if he deems it necessary. He is not obliged to do so if he is satisfied with the report.

## INTERNATIONAL LAW

It is observed that under the international law, the limitation and restriction on freedom and rights are justified but must be done for the purpose of securing due recognition and respect for the rights and freedom of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.<sup>41</sup> The concept of sovereignty of the state is still intact under the international law and the rights of the state to enact laws for its own good must be respected. Murray Hunt reaffirmed this where he said:

*...sovereignty is a property conventionally ascribed to states, or to their governing authorities, and "sovereign power", whether legal or political is ultimate power, power which admits of no superior power or higher authority.<sup>42</sup>*

<sup>36</sup> *Re Application of Tan Boon Liat & Ors.* (Tan Boon Liat v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors; Patrick Eugene Long v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors; Donnie Lee Avila v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors.) [1977] 2MLJ 18 - Federal Court. See also the case of *Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor v Mohd Zamri b Mohd Arrifin* [1990] 1 MLJ 102, where it was held by the Supreme Court that person suspected in drug trafficking activities could lawfully be detained under the Emergency (Public Order and Prevention of Crime) Ordinance 5 of 1969, and this was confirmed by section 25 of the Dangerous Drugs (Special Preventive Measures Act) 1985.

<sup>37</sup> Section 4(1)[detention order] & 4A(1)[restriction order]. In 1988, a new section 7A (Act A706/88) was added to the Emergency (Public Order and Prevention of Crime) Ordinance 5 of 1969, which empowered the Minister to extend the two-year detention order or restriction order. This made the continuation of the detention or restriction of such persons possible, instead of a fresh detention or restriction order being made under section 6(5) of Dangerous Drugs (Special Preventive Measures) Act 1985, on ground which need not necessarily be the same from the previous detention or restriction order made under the Emergency (Public Order and Prevention of Crime) Ordinance 5 of 1969.

<sup>38</sup> Section 3(1) & 4(1), the Emergency (Public Order and Prevention of Crime) Ordinance 5 of 1969.

<sup>39</sup> Act 316/85 w.e.f. 15<sup>th</sup> June 1985 (PU(B)) 305/85). The Dangerous Drugs (Special Preventive Measures) (Advisory Board Procedure) Rules, 1987 (P.U. (A) 345/1987) was made under section 9(3) of the Dangerous Drugs (Special Preventive Measures) Act 1985.

<sup>40</sup> The Prime Minister was reported in the *New Straits Times* of 8<sup>th</sup> and 23<sup>rd</sup> December 1978 to have said, when moving the amendments in both Houses that the new clause (f) in Article 149 of the Federal Constitution was proposed in order to deal effectively with trafficking and secret society activities - quoted from the case of *Chew Phang Oo v Timbalan Menteri Dalam Negeri, Malaysia* [1991] 1 MLJ 59. Paragraph (f) was added vide Act A442/1978, w.e.f. 31<sup>st</sup> December 1978. The overriding clause was made through an amendment of the Federal Constitution in 1981: House of Representatives (1988b), pg 62 - 63.

<sup>41</sup> Article 29(2) of the Universal Declaration of Human Rights (UDHR)

<sup>42</sup> Murray Hunt, *Using Human Rights Law in English Courts*, Hart Publishing, 1998 p.3

An Act of Parliament can never be invalid merely because it was opposed to the doctrines of international law and there is no legal basis for the theory that judges may overrule an Act of Parliament on the ground that it went beyond the internationally permissible limits of Parliamentary authority.<sup>43</sup> It is noted that the preventive detention may go against the principle provided for in the International Covenant on Civil and Political Rights (ICCPR) on the right to fair hearing and due process of law.<sup>44</sup> Be that as it may, Malaysia is not a party to the ICCPR and even though ISA may conflict with a treaty obligation, which has not been statutorily incorporated into domestic law, the courts are constitutionally bound to give effect to the domestic provision, even though this involves a breach of the state's obligation in international law. The Court must not treat an international treaty entered into by the executive as a source of enforceable legal rights and obligations until Parliament has blessed the same with legitimacy and truly "legal" pedigree by incorporating it into domestic law in the form of statute. This principle was supported by the case decided by the Privy Council in *AG for Canada v Ag for Ontario*.<sup>45</sup>

### Preventive Laws of Other Countries

It is observed that other countries also have legislations akin to ISA. India has National Security Act, 1980. It is a preventive law, which is intended to detain any person who is believed to be subversive and whose actions are prejudicial to the security of the country. It is noted that the power to detain a person in India is enforced by the Federal and State Government as provided under section 3 of the Act. Any person in India can be detained for a period of not more than 3 months and if it is deemed necessary, it can continue from time to time but not more than 3 months at a time. The detainee is given the right to make his representation before the Advisory Board. It must be given as soon as possible i.e. 3 weeks after the detention date. Representation is conducted before the Advisory Board in accordance with section 8 to 12 of the Act. Representation report may determine whether or not certain detention order will be continued or revoked. The officer responsible for the detention should refer the detention to the state government as soon as possible with the ground of the detentions and relevant evidences. Upon receipt, the state government will refer the detainee to the Federal Government within 7 days period with the ground of detention. Section 13 of the Act provides that the maximum period of detention is 12 months commencing from the detention's date.

In the United States of America, the Internal Security Act 1950 is intended to control communist and subversives activities. The Act is divided into two parts namely Title I which consist of 15 sections that mostly define *Communist-action Organization, prohibited acts, registration of Communists Organization* and registration of Members of Communist Organization. Title II relates to *Emergency Detention* which comprises of 12 sections. Detention order is issued on person who is believed to be involved or abet in sabotage or espionage. In the United States, the President is vested with the power to detain any person who is believed to be involved or in organizing any activities of espionage and sabotage as provided under section 103 (a). In this connection, the President should declare internal security emergency whereby the American territory is being attacked. Secondly the declaration of war made by the Congress, and thirdly when there is internal dispute within the country with the assistance from its enemy. The above is provided under section 102 (a) of the Internal Security Act 1950. The declaration is made for the purposes of protecting, defending and safeguarding the Constitution and territorial integrity of the American people. In addition thereto, in the event a person is being detained, the person has a right to be adjudicated before the hearing officer appointed by the President. The detainee can produce its own witnesses and given the opportunity to cross-examine witnesses produced against him. He can appeal thereafter to the Board of Detention Review comprises of 9 members appointed by the President. He is also given the opportunity to channel his appeal to the Court of Appeal and through *certiorari* to the Supreme Court.

South Korea vide its National Security Law 1988 considers that any action which is deemed to be against the government can be punished with the death penalty. Chapter 2 comprises of 15 articles relating to offences and punishment can be meted out against the perpetrators. Article 3 of the Act provide for 2 years detention to death penalty depending on the gravity of the offence if he is found guilty.

The government of Ireland has also taken initiative to enact the Northern Ireland (Emergency Provisions) Act 1991, which seeks to curb the terrorist activities. "Terrorism" under section 66 has been defined as using the force for political motives, and to scare the public. "Terrorism" is defined as the commission or attempt to commit, organize or train certain groups for terrorist activities. It is to be noted that the power to detain is vested to the Secretary of State. He can make interim detention order as provided under section 4(1) of the Third Schedule to section 34 of the Northern Ireland Prevention of Terrorism (Temporary Provisions) Act 1989. Part IV Prevention of Terrorism (Temporary Provisions) Act 1989 contains provisions on detention order. After the period of detention order lapsed, Secretary of State will refer the detention to the *Adviser* under paragraph 5. If the detention is not referred to the *Adviser*, then the detention will expire after 14 days. Upon receipt the report

<sup>43</sup> *ibid*.

<sup>44</sup> Article 14 of the ICCPR. Malaysia is not a party to the ICCPR and therefore not bound with its provisions.

<sup>45</sup> Lord Atkin referred to the "well established rule that the making of a treaty is an executive act, while the performance of its obligations, if they entail alteration of the existing domestic law, requires legislative action"



from the *Adviser* under paragraph 7(1), the Secretary of State will evaluate the need of detention and if the detention is necessary to protect public at large then detention order will be issued under paragraph 8(1) of the Schedule.

The United Kingdom at one time had Regulation 18B of the Defence Regulations, Regulation 14B of the wartime Defence of the Realm Act (DORA), and the Restoration of Order in Ireland Act of 1920 (ROIA) just to name a few. Regulation 18B, for example was used by the British Government during the second world war period from 1939 to 1945 to detain a very considerable number of people without charge, or trial, or term set, on the broad ground that this was necessary for national security. The use of Regulation 14B was even extended by the authorities to crush the Irish rebellion of 1916 (the Easter Rising). ROIA was used after the war in aid of DORA. Preventive detention in UK had in fact existed very much earlier than that - it has a long earlier history.<sup>46</sup>

In South Africa before 1991, provision to detain a person for certain reasons are provided for in the Internal Security Act 1982, however certain provisions have been abolished through the Internal Security and Intimidation Amendment Act (No.138) in 1991.

## ISLAMIC LAW

Preventive detention, restriction or actions is allowed towards preserving and promoting human welfare and prevention of harm (*maslahah*). On the ground of *maslahah*, Kamali observed:

*The doctrine of Maslahah is broad enough to encompass within its fold a variety of objectives, both idealist and pragmatic, to nurture the standards of good government, and to help develop the much needed public confidence in the authority of statutory legislation in Muslim societies. The doctrine of maslahah can strike balance between the highly idealistic levels of expectation from the government on the part of the public and the efforts of the latter to identify more meaningfully with Islam*<sup>47</sup>

The term *maslahah* literally means 'benefit' or 'welfare' and is generally used under Maliki jurisprudence, in a narrower sense, to express the principle of 'public benefit' or 'public welfare' an often qualified as '*maslahah mursalah*' (literally meaning 'released benefit') when such benefit is not tied down to specific textual authority but based on consideration of collective well being.<sup>48</sup> In this respect, it is argued that the doctrine of *maslahah* may justify the usage of ISA as the sole purpose is to protect the public at large at the expense of individual liberty on the security issue which is responsibility of the government. Article 18 (a) of the Cairo Declaration states that 'Everyone shall have the right to live in security for himself, his religion, his dependents, his honour and his property.' Article 24 of the Cairo Declaration is a saving provision that states 'All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah.'

## Conclusion.

The Universal Declaration of Human Rights 1948 which purports to be as a guideline for right and freedom of mankind concede to the fact that in the exercise of rights and freedoms the limitation can be imposed as are determined by law. Article 29(2) of the UDHR is reproduced as below:

In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society."

The UDHR is regarded as having its own standing under the domestic law of Malaysia. The Human Rights Commission of Malaysia Act 1999 (Act 597) provides as follows:

*For the purpose of this Act, regard shall be had to the Universal Declaration of Human Rights 1948 to the extent that it is not inconsistent with Federal Constitution.*

Preventive detention (preventive actions) is repugnant cannot be disputed. However, this is only the rule of the thumb. This rule is abandoned or disqualified under dire exceptions. The National Security Council is the best body to decide what those exceptions are.<sup>49</sup> Thus, it not surprising that issues such as dangerous drugs, communism, religious extremism, racialism, mafias like activities, and biological bombs are some issues categorised as such by the National Security Council of Malaysia as security matters. Preventive detention is or not a breach of human rights must be seen from the perspective whether it is

<sup>46</sup> Simpson (1992), "In the Highest Degree Odious - Detention without trial in wartime Britain", pg. 2-4.

<sup>47</sup> Kamali, 'Have We Neglected the Shariah-Law Doctrine of Maslahah?' 91988027 Islamic Studies, No.4, p287-288.

<sup>48</sup> Mashood A Baderin, International Human Rights and Islamic Law, Oxford University Press, 2003 p.42

<sup>49</sup> See Article 23(a) of the Cairo Declaration on Human Rights; Article 149, & 150 of the Malaysian Federal Constitution

oppressive or not on the individuals concerned and balancing their rights with that of the society to live in peace and harmony. That is a question of fact depending whether the facts and information relied upon by the authorities is credible or fabricated, arbitrary or judicial. That depends on the background of the persons that make up the Representation Board and the Review Board, and the investigation officers that make such a report and subsequently relied upon by the Home Office Minister.

Section 3(3) of the Police Act empowers the police to maintain law and order and the securing of intelligence for preserving national resilient and security. Where a democratic government is in possession of credible evidence that mayhem in society will result unless preventive actions are taken, it is duty bound to act against any individual or group in the name of public interest to ensure that there is order in society and a user-friendly environment politically, economically and environmentally is maintained. Article 17 (a) of the Cairo Declaration states 'Everyone shall have the right to live in a clean environment, away from vice and moral corruption, that would favour a healthy ethical development of his person and it is incumbent upon the State and society in general to afford that right.'

Preventive actions are not alien to Islam. I like readers to consider the preventive actions based on the following events mentioned in the Quran between Moses and Khidr and to then let you decide for yourself what the undemoted events connote;<sup>50</sup>

Moses said to him: may I follow thee, on the footing that thou teach me something of the (Higher) Truth which thou has been taught? The (other) said: "Verily thou wilt not be able to have patience with me! And how canst thou have patience about things about which thy understanding is not complete? Moses said: "Thou wilt find me if Allah so will (truly) patient: nor shall I disobey thee in aught." The other said: "If then thou wouldst follow me, ask me no question about anything until I myself speak to thee concerning it."

So they proceeded: Until, when they were in the boat, he scuttled it. Said Moses: "Hast thou scuttled it in order to drown those in it? Truly a strange thing hast thou done!" He answered: "Did I not tell thee that thou canst have no patience with me?" Moses said: "Rebuke me not for forgetting, nor grieve me by raising difficulties in my case."

Then they proceeded: Until, when they met a young man, he slew him. Moses said: "Hast thou slain an innocent person who had slain none? Truly foul (unheard of) thing hast thou done!" He answered: "Did I not tell thee that thou canst have no patience with me?" (Moses) said: "If ever I ask thee about anything after this, keep me not in thy company: then wouldst thou have received (full) excuse from my side."

Then they proceeded: Until, when they came to the inhabitants of a town, they asked them for food, but they refused them hospitality. They found there a wall on the point of falling down, but he set it up straight. (Moses) said: "If thou hadst wished, surely thou couldst have exacted some recompense for it!" He answered: "This is the parting between me and thee: now will I tell thee the interpretation of (those things) over which thou wast unable to hold patience."

As for the boat, it belonged to certain men in dire want: They plied on the water: I but wished to render it unserviceable, for there was after them a certain king who seized on every boat by force. As for the youth, his parents were people of faith, and we feared that he would grieve them by obstinate rebellion and ingratitude (to Allah and man). As for the wall, it belonged to two youths, orphans, in the Town: There was, beneath it, a buried treasure, to which they were entitled: their father had been a righteous man: so thy Lord desired that they should attain their age of full strength and get out their treasure – a mercy (and favour) from thy Lord. *I did not do it of my own accord. Such is the interpretation of (those things) over which thou wast unable to hold patience (my emphasis).*"

The issues are whether his actions were arbitrary? Were the information relied upon credible? These are questions of facts having nexus to render the preventive detention under a given situation as being oppressive or necessary.

<sup>50</sup> Surah al-Kahf (the Cave)[Chapter 18] verses 66 – 82 –translation from 'The meaning of the Holy Quran' by Abdullah Yusuf Ali, 9<sup>th</sup> Edition, amana publications, U.S.A.

## Universal Declaration of Human Rights - Adopted and proclaimed by

General Assembly resolution 217 A (III) of 10 December 1948

On December 10, 1948 the General Assembly of the United Nations adopted and proclaimed the Universal Declaration of Human Rights the full text of which appears in the following pages. Following this historic act the Assembly called upon all Member countries to publicize the text of the Declaration and "to cause it to be disseminated, displayed, read and expounded principally in schools and other educational institutions, without distinction based on the political status of countries or territories."

**PREAMBLE**

Whereas recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Whereas disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people,

Whereas it is essential, if man is not to be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law,

Whereas it is essential to promote the development of friendly relations between nations,

Whereas the peoples of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and women and have determined to promote social progress and better standards of life in larger freedom,

Whereas Member States have pledged themselves to achieve, in co-operation with the United Nations, the promotion of universal respect for and observance of human rights and fundamental freedoms,

Whereas a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge,

Now, Therefore **THE GENERAL ASSEMBLY** proclaims **THIS UNIVERSAL DECLARATION OF HUMAN RIGHTS** as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

**Article 1.**

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

**Article 2.**

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

**Article 3.**

Everyone has the right to life, liberty and security of person.

**Article 4.**

No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms.

**Article 5.**

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

*Article 6.*

Everyone has the right to recognition everywhere as a person before the law.

*Article 7.*

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

*Article 8.*

Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.

*Article 9.*

No one shall be subjected to arbitrary arrest, detention or exile.

*Article 10.*

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

*Article 11.*

(1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence.

(2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.

*Article 12.*

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

*Article 13.*

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

*Article 14.*

(1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.

(2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.

*Article 15.*

(1) Everyone has the right to a nationality.

(2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.

*Article 16.*

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

(2) Marriage shall be entered into only with the free and full consent of the intending spouses.

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

*Article 17.*

(1) Everyone has the right to own property alone as well as in association with others.

(2) No one shall be arbitrarily deprived of his property.

*Article 18.*

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

*Article 19.*

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

*Article 20.*

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.

*Article 21.*

- (1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- (2) Everyone has the right of equal access to public service in his country.
- (3) The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

*Article 22.*

Everyone, as a member of society, has the right to social security and is entitled to realization, through national effort and international co-operation and in accordance with the organization and resources of each State, of the economic, social and cultural rights indispensable for his dignity and the free development of his personality.

*Article 23.*

- (1) Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment.
- (2) Everyone, without any discrimination, has the right to equal pay for equal work.
- (3) Everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection.
- (4) Everyone has the right to form and to join trade unions for the protection of his interests.

*Article 24.*

Everyone has the right to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay.

*Article 25.*

- (1) Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
- (2) Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock shall enjoy the same social protection.

*Article 26.*

- (1) Everyone has the right to education. Education shall be free, at least in the elementary and fundamental stages. Elementary education shall be compulsory. Technical and professional education shall be made generally available and higher education shall be equally accessible to all on the basis of merit.
- (2) Education shall be directed to the full development of the human personality and to the strengthening of respect for human rights and fundamental freedoms. It shall promote understanding, tolerance and friendship among all nations, racial or religious groups, and shall further the activities of the United Nations for the maintenance of peace.
- (3) Parents have a prior right to choose the kind of education that shall be given to their children.

*Article 27.*

- (1) Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits.
- (2) Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.

*Article 28.*

Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.

*Article 29.*

- (1) Everyone has duties to the community in which alone the free and full development of his personality is possible.
- (2) In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.
- (3) These rights and freedoms may in no case be exercised contrary to the purposes and principles of the United Nations.

*Article 30.*

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

**The Cairo Declaration on Human Rights in Islam, 5 August 1990.**

The Nineteenth Islamic Conference of Foreign Ministers (Session of Peace, Interdependence and Development), held in Cairo, Arab Republic of Egypt, from 9-14 Muharram 1411H (31 July to 5 August 1990),

Keenly aware of the place of mankind in Islam as vicegerent of Allah on Earth;

Recognizing the importance of issuing a Document on Human Rights in Islam that will serve as a guide for Member states in all aspects of life;

Having examined the stages through which the preparation of this draft Document has so far, passed and the relevant report of the Secretary General;

Having examined the Report of the Meeting of the Committee of Legal Experts held in Tehran from 26 to 28 December, 1989;

Agrees to issue the Cairo Declaration on Human Rights in Islam that will serve as a general guidance for Member States in the Field of human rights.

Reaffirming the civilizing and historical role of the Islamic Ummah which Allah made as the best community and which gave humanity a universal and well-balanced civilization, in which harmony is established between hereunder and the hereafter, knowledge is combined with faith, and to fulfill the expectations from this community to guide all humanity which is confused because of different and conflicting beliefs and ideologies and to provide solutions for all chronic problems of this materialistic civilization.

In contribution to the efforts of mankind to assert human rights, to protect man from exploitation and persecution, and to affirm his freedom and right to a dignified life in accordance with the Islamic Shari'ah.

Convinced that mankind which has reached an advanced stage in materialistic science is still, and shall remain, in dire need of faith to support its civilization as well as a self motivating force to guard its rights;

Believing that fundamental rights and freedoms according to Islam are an integral part of the Islamic religion and that no one shall have the right as a matter of principle to abolish them either in whole or in part or to violate or ignore them in as much as they are binding divine commands, which are contained in the Revealed Books of Allah and which were sent through the last of His Prophets to complete the preceding divine messages and that safeguarding those fundamental rights and freedoms is an act of worship whereas the neglect or violation thereof is an abominable sin, and that the safeguarding of those fundamental rights and freedom is an individual responsibility of every person and a collective responsibility of the entire Ummah;

Do hereby and on the basis of the above-mentioned principles declare as follows:

ARTICLE 1:

(a) All human beings form one family whose members are united by their subordination to Allah and descent from Adam. All men are equal in terms of basic human dignity and basic obligations and responsibilities, without any discrimination on the basis of race, colour, language, belief, sex, religion, political affiliation, social status or other considerations. The true religion is the guarantee for enhancing such dignity along the path to human integrity.

(b) All human beings are Allah's subjects, and the most loved by Him are those who are most beneficial to His subjects, and no one has superiority over another except on the basis of piety and good deeds.

ARTICLE 2:

(a) Life is a God-given gift and the right to life is guaranteed to every human being. It is the duty of individuals, societies and states to safeguard this right against any violation, and it is prohibited to take away life except for a shari'ah prescribed reason.

(b) It is forbidden to resort to any means which could result in the genocidal annihilation of mankind.

(c) The preservation of human life throughout the term of time willed by Allah is a duty prescribed by Shari'ah.

(d) Safety from bodily harm is a guaranteed right. It is the duty of the state to safeguard it, and it is prohibited to breach it without a Shari'ah-prescribed reason.

ARTICLE 3:

(a) In the event of the use of force and in case of armed conflict, it is not permissible to kill non-belligerents such as old men, women and children. The wounded and the sick shall have the right to medical treatment; and prisoners of war shall have the right to be fed, sheltered and clothed. It is prohibited to mutilate or dismember dead bodies. It is required to exchange prisoners of war and to arrange visits or reunions of families separated by circumstances of war.

(b) It is prohibited to cut down trees, to destroy crops or livestock, to destroy the enemy's civilian buildings and installations by shelling, blasting or any other means.

ARTICLE 4:

Every human being is entitled to human sanctity and the protection of one's good name and honour during one's life and after one's death. The state and the society shall protect one's body and burial place from desecration.

ARTICLE 5:

(a) The family is the foundation of society, and marriage is the basis of making a family. Men and women have the right to marriage, and no restrictions stemming from race, colour or nationality shall prevent them from exercising this right.

(b) The society and the State shall remove all obstacles to marriage and facilitate it, and shall protect the family and safeguard its welfare.

ARTICLE 6:

(a) Woman is equal to man in human dignity, and has her own rights to enjoy as well as duties to perform, and has her own civil entity and financial independence, and the right to retain her name and lineage.

(b) The husband is responsible for the maintenance and welfare of the family.

ARTICLE 7:

(a) As of the moment of birth, every child has rights due from the parents, the society and the state to be accorded proper nursing, education and material, hygienic and moral care. Both the fetus and the mother must be safeguarded and accorded special care.

(b) Parents and those in such like capacity have the right to choose the type of education they desire for their children, provided they take into consideration the interest and future of the children in accordance with ethical values and the principles of the Shari'ah.

(c) Both parents are entitled to certain rights from their children, and relatives are entitled to rights from their kin, in accordance with the tenets of the shari'ah.

ARTICLE 8:

Every human being has the right to enjoy a legitimate eligibility with all its prerogatives and obligations in case such eligibility is lost or impaired, the person shall have the right to be represented by his/her guardian.

## ARTICLE 9:

(a) The seeking of knowledge is an obligation and provision of education is the duty of the society and the State. The State shall ensure the availability of ways and means to acquire education and shall guarantee its diversity in the interest of the society so as to enable man to be acquainted with the religion of Islam and uncover the secrets of the Universe for the benefit of mankind.

(b) Every human being has a right to receive both religious and worldly education from the various institutions of teaching, education and guidance, including the family, the school, the university, the media, etc., and in such an integrated and balanced manner that would develop human personality, strengthen man's faith in Allah and promote man's respect to and defence of both rights and obligations.

## ARTICLE 10:

Islam is the religion of true unspoiled nature. It is prohibited to exercise any form of pressure on man or to exploit his poverty or ignorance in order to force him to change his religion to another religion or to atheism.

## ARTICLE 11:

(a) Human beings are born free, and no one has the right to enslave, humiliate, oppress or exploit them, and there can be no subjugation but to Allah the Almighty.

(b) Colonialism of all types being one of the most evil forms of enslavement is totally prohibited. Peoples suffering from colonialism have the full right to freedom and self-determination. It is the duty of all States peoples to support the struggle of colonized peoples for the liquidation of all forms of and occupation, and all States and peoples have the right to preserve their independent identity and control over their wealth and natural resources.

## ARTICLE 12:

Every man shall have the right, within the framework of the Shari'ah, to free movement and to select his place of residence whether within or outside his country and if persecuted, is entitled to seek asylum in another country. The country of refuge shall be obliged to provide protection to the asylum-seeker until his safety has been attained, unless asylum is motivated by committing an act regarded by the Shari'ah as a crime.

## ARTICLE 13:

Work is a right guaranteed by the State and the Society for each person with capability to work. Everyone shall be free to choose the work that suits him best and which serves his interests as well as those of the society. The employee shall have the right to enjoy safety and security as well as all other social guarantees. He may not be assigned work beyond his capacity nor shall he be subjected to compulsion or exploited or harmed in any way. He shall be entitled - without any discrimination between males and females - to fair wages for his work without delay, as well as to the holidays allowances and promotions which he deserves. On his part, he shall be required to be dedicated and meticulous in his work. Should workers and employers disagree on any matter, the State shall intervene to settle the dispute and have the grievances redressed, the rights confirmed and justice enforced without bias.

## ARTICLE 14:

Everyone shall have the right to earn a legitimate living without monopolization, deceit or causing harm to oneself or to others. Usury (riba) is explicitly prohibited.

## ARTICLE 15:

(a) Everyone shall have the right to own property acquired in a legitimate way, and shall be entitled to the rights of ownership without prejudice to oneself, others or the society in general. Expropriation is not permissible except for requirements of public interest and upon payment of prompt and fair compensation.

(b) Confiscation and seizure of property is prohibited except for a necessity dictated by law.

## ARTICLE 16:

Everyone shall have the right to enjoy the fruits of his scientific, literary, artistic or technical labour of which he is the author; and he shall have the right to the protection of his moral and material interests stemming therefrom, provided it is not contrary to the principles of the Shari'ah.

## ARTICLE 17:

(a) Everyone shall have the right to live in a clean environment, away from vice and moral corruption, that would favour a healthy ethical development of his person and it is incumbent upon the State and society in general to afford that right.



- (b) Everyone shall have the right to medical and social care, and to all public amenities provided by society and the State within the limits of their available resources.
- (c) The States shall ensure the right of the individual to a decent living that may enable him to meet his requirements and those of his dependents, including food, clothing, housing, education, medical care and all other basic needs.

ARTICLE 18:

- (a) Everyone shall have the right to live in security for himself, his religion, his dependents, his honour and his property.
- (b) Everyone shall have the right to privacy in the conduct of his private affairs, in his home, among his family, with regard to his property and his relationships. It is not permitted to spy on him, to place him under surveillance or to besmirch his good name. The State shall protect him from arbitrary interference.
- (c) A private residence is inviolable in all cases. It will not be entered without permission from its inhabitants or in any unlawful manner, nor shall it be demolished or confiscated and its dwellers evicted.

ARTICLE 19:

- (a) All individuals are equal before the law, without distinction between the ruler and the ruled.
- (b) The right to resort to justice is guaranteed to everyone.
- (c) Liability is in essence personal.
- (d) There shall be no crime or punishment except as provided for in the Shari'ah.
- (e) A defendant is innocent until his guilt is proven in a fast trial in which he shall be given all the guarantees of defence.

ARTICLE 20:

It is not permitted without legitimate reason to arrest an individual, or restrict his freedom, to exile or to punish him. It is not permitted to subject him to physical or psychological torture or to any form of maltreatment, cruelty or indignity. Nor is it permitted to subject an individual to medical or scientific experiments without his consent or at the risk of his health or of his life. Nor is it permitted to promulgate emergency laws that would provide executive authority for such actions.

ARTICLE 21:

Taking hostages under any form or for any purpose is expressly forbidden.

ARTICLE 22:

- (a) Everyone shall have the right to express his opinion freely in such manner as would not be contrary to the principles of the Shari'ah.
- 1.. Everyone shall have the right to advocate what is right, and propagate what is good, and warn against what is wrong and evil according to the norms of Islamic Shari'ah.
- (c) Information is a vital necessity to society. It may not be exploited or misused in such a way as may violate sanctities and the dignity of Prophets, undermine moral and ethical Values or disintegrate, corrupt or harm society or weaken its faith.
- (d) It is not permitted to excite nationalistic or doctrinal hatred or to do anything that may be an incitement to any form of racial discrimination.

ARTICLE 23:

- (a) Authority is a trust; and abuse or malicious exploitation thereof is explicitly prohibited, in order to guarantee fundamental human rights.
- (b) Everyone shall have the right to participate, directly or indirectly in the administration of his country's public affairs. He shall also have the right to assume public office in accordance with the provisions of Shari'ah.

ARTICLE 24:

All the rights and freedoms stipulated in this Declaration are subject to the Islamic Shari'ah.

ARTICLE 25:

The Islamic Shari'ah is the only source of reference for the explanation or clarification of any of the articles of this Declaration.