

# THE HUMAN RIGHTS DISCOURSE IN MALAYSIA & INDONESIA

**HUMAN RIGHTS : ABSOLUTE  
OR LIMITED?**

DR IQBAL



## INTRODUCTION

---

- The concept of human rights becomes relevant to ordinary people when the relative security of everyday life is absent or snatched away.
- It has been said that **human rights are most needed when they are most violated. Where they are generally well respected, we tend to take them for granted, and may consequently underestimate their importance.**

## ORIGIN OF THE CONCEPT OF HUMAN RIGHTS

---

- The term **HUMAN RIGHT** was first coined by American Writer, Henry David Thoreau in his treatise "Civil Disobedience". The phrase **replaced** the terms *natural rights* and *rights of man* and entered into **general usage** following World War II, after the creation of the United Nations.
- One of the advantages of the phrase **human rights** is that it suggests **UNIVERSAL APPLICABILITY**.



## GENERAL INTERPRETATION OF HUMAN RIGHTS BY RHODA E. HOWARD

---

- The concept of human rights renders status distinctions such as race, gender, and religion politically and legally irrelevant and **demands equal treatment for all, regardless of whether they fulfill expected obligations to the community.**

## SPECIAL FEATURES OF HUMAN RIGHTS BY JACK DONNELLY

---

- Human rights are literally the **rights that one has simply because one is a human being.**
- Human rights are **equal rights**, one either is or is not a human being, and therefore has the same human rights as everyone else ( or none at all) .
- Human rights also are **inalienable rights**. One cannot stop being human , no matter how badly one behaves, or how barbarously one is treated.
- And they are **universal rights**, in the sense that today we consider **all members of the species Homo sapiens " Human Beings"** and thus holders of human rights.

## AMERICAN DECLARATION OF INDEPENDENCE

---

- Declaration of independence issued by the thirteen American states in July 1776, we hold these truths to be self evident, that **all men are created equal, that they are endowed by their creator with certain inalienable rights, that among these are LIFE, LIBERTY and THE PURSUIT OF HAPPINESS.**

## HAS THE UNIVERSAL DECLARATION OF HUMAN RIGHTS BEEN EFFECTIVE?

---

"There is no doubt that the declaration has encountered many problems in putting the principles into practice. However the **main fault lies in the formulators of this declaration or that their power or the slogans they have chanted have caused them to pronounce themselves as the defenders of this declaration and the articles set forth therein, here, the western countries are in mind. They (the western countries) tear nations into pieces, loot and plunder what they have and speak of human rights. That is why they consider Israel as a democratic country whereas the countries that do not follow the west are accused of antagonizing human rights. Talk of these things is sad especially when we consider the right of veto and the great countries enjoy this right and thus violate the human rights."**

Islamic Views on Human Rights ( Viewpoints of Iranian Scholars)



## ISSUE IN UNIVERSALIZING HUMAN RIGHTS

---

- The desire to “UNIVERSALIZE” a set of rights available to all people everywhere has confronted and **been confronted** by deep and strong commitments to **two forms of “particularism”** : sovereign state power and cultural, religious, national and social distinctions.

## WESTERN CONCEPT OF HUMAN RIGHTS VS ASIAN VALUES

---

“Western concept of human rights alien to and incompatible with the core values embedded in Asian culture and tradition and that the west’s attempt to impose its own concept of human rights on Asia constitutes **CULTURAL IMPERIALISM**. Some intellectuals are also criticizing the current human rights discourses as involving **WEST CENTRIC BIAS** although their arguments are more sophisticated and nuanced.”

The globalization of human rights by United Nations University

LIVING EXAMPLE  
FROM  
SINGAPORE &  
MALAYSIA  
CASES



SINGAPORE



## SINGAPORE PENAL CODE (CHAPTER 224)

---

### SECTION 377 A -OUTRAGES ON DECENCY

- "Any male person who, in public or private, commit, or abet the commission of , or procures or attempts to procure the commission by any male person of, any act of gross indecency with another male person, shall be punished with imprisonment for a term which may extend to 2 years."
- Section 377 A clearly criminalize sex between mutually consenting adult men ,even when it is performed in private.

## LIM MENG SUANG AND ANOTHER V ATTORNEY- GENERAL AND ANOTHER APPEAL AND ANOTHER MATTER [2014] SGCA 53

---

### FACTS

- The appellant in Civil Appeal No 125 of 2013. Tan Eng Hong (Tan) was arrested for engaging in oral sex with male partner in the cubicle of a public toilet. Tan and his male partner were charged under Section 377A of the Penal Code (Cap 244, 2008 Rev Ed) .Tan filed an application to challenge the constitutionality of Section 377A. Shortly after this , the Section 377A charge against Tan was substituted.

## CONT...

- The appellants in Civil Appeal No 54 of 2013, Lim Meng Suang and Kenneth Chee Mun Leon ( Lim and Chee) had been in a romantic and sexual relationship for the past 15 years. They filed an application to challenge the constitutionality of S 377A
- Both Tan's and Lim and Chee's applications were dismissed by the high court in separate judgments, the Judge held that S 377A was NOT UNCONSTITUTIONAL.
- Both sets of appellants appealed against this. Tan initially applied to intervene in Lim and Chee's appeal but this was subsequently withdrawn; Tan then successfully applied for his appeal to be expedited and heard together with Lim and Chee's appeal.

## COURT'S JUDGMENT

HELD : dismissing the application, and upholding that Section 377 A was not unconstitutional.

- "Foreign cases that had conferred an expansive constitutional right to life and liberty **should be approached with circumspection because they were decided in the context of their unique social, political and legal circumstances.**"



## PM Lee Hsien Loong's firm view on the debate over the repeal of Section 377A

- "Singapore is basically a conservative society, the family is the basic building block of this society. And by family in Singapore, we mean one man, one woman, marrying, having children and bringing up children within that framework of a stable family unit."
- GAY SEX IS A CRIME IN SINGAPORE WHICH THE NATION'S SUPREME COURT AFFIRMED IN 2014

## PRIME MINISTER OF SINGAPORE ON LGBT : "SINGAPORE IS NOT READY FOR GAY MARRIAGE"

Question addressed by Journalist Mr. Tony Velasquez, ABS-CBN News to the PM of Singapore, Lee Hsien Loong's :

Question:

"Same sex marriage seems to be taking off in other more developed countries. Is Singapore ready to take that issue as well?"

## ANSWER:

## "NO, I DON'T THINK SINGAPORE IS READY"

- "In Singapore, there is a range of views, **they are gay groups in Singapore**. They are gay people in Singapore. And they have a place to stay here, and **we let them live their own lives. And we do not harass them, or discriminate against them.**
- "But neither, I think, **if you ask most Singaporeans, do we want the LGBT community to set the tone for Singapore society. The society is basically a conservative one. It is changing, but it is changing gradually.** And there are different views, including views especially from the religious groups who push back. And it is completely understandable"
- "there is a space for the gay community, but they should not push the agenda too hard. Because if they push the agenda too hard, there will be a very strong push back. And this is not an issue where there is a possibility that the two sides can discuss, and eventually come to consensus. Now, **these are very entrenched views, and the more you discuss, the angrier people get.**"





# MALAYSIA

## Section 66 of the Syariah Criminal Enactment (Negeri Sembilan) 1992

- **SECTION 66 : Male person posing as a woman.**
- Any male person who, in any public place wears a woman attire and poses as a woman shall be guilty of an offence and shall be liable on conviction to a fine not exceeding one thousand ringgit or to imprisonment for a term not exceeding six months or to both.

## GOV OF NEGERI SEMBILAN & ANOR V MUHAMAD JUZAILI BIN KHAMIS & ANOR

---

### • FACTS OF THE CASE

- All three respondents are male bridal make up artists professing the religion of islam. The Respondents are also male to female transsexuals or "Mak Nyah"
- The respondents filed an application for judicial review to the high court of malaya for a declaration that **Section 66 of the Syariah Criminal Enactment (Negeri Sembilan) 1992 is void and inconsistent with Articles 5(1), 8(1), 8(2), 9(2) and 10 (1)(a) of the Federal Constitution.**

## Cont...

---

- The Judicial Review application was dismissed by the High Court and aggrieved with such decision, the Respondents appealed to the Court of Appeal.
- **DECISION OF THE COURT OF APPEAL:**
  - "Section 66 of the enactment is invalid and unconstitutional as it offends the fundamental liberties enshrined in Articles 5(1), 8(1) and (2) and 9 (2) of the Federal Constitution since it is a law purporting to restrict freedom of speech and expression but it is a law not made by parliament.
  - **Section 66** is declared **VOID**, **appeal allowed**.



## The case was later on brought up to the FEDERAL COURT

---

- Decision of the FEDERAL COURT
- HELD: Set aside the decision of the court of appeal, on the ground of technicalities and procedures. Hence, Section 66 of the Syariah Criminal Enactment (Negeri Sembilan) 1992 is not unconstitutional.

---

Good Judgment by Malaysian Court in the case of Soon Singh a/l Bikar Singh v Pertubuhan Kebajikan Islam Malaysia (Perkim) Kedah & Anor [1999] 1 MLJ 489 [Tab 2 VOL 3(a) ABOA]

- "It is inevitable that since matters on conversion to islam come under the jurisdiction of the syariah courts, by implication , conversion out of islam should also fall under the jurisdiction of the same courts. Thus, the appellant's application for a declaration that he was no longer a muslim came within the jurisdiction of the syariah court and not that of the high court." Learned Judge Mohamed Dzaiddin FCJ

SEKIAN TERIMA KASIH

MATUR NUWUN NUSANTARA

