

Printing Instructions: Select **File** and then **Print** from your browser's menu

--- Article Information ---

This article was printed from [Sun2Surf](#)

Article's URL: <http://www.thesundaily.com/article.cfm?id=14761>

Human rights on the march

By: Shad Saleem Faruqi (Thu, 13 Jul 2006)

Rights without remedies are like lights that do not shine and fires that do not glow.

In every legal system the remedial and redressal part of the law is most important for bridging the gap between theory and reality. In Malaysia, several legal and non-legal mechanisms exist for redressing violations of human rights.

Habeas corpus

For the denial of life "or liberty" contrary to the law, habeas corpus can issue. The legal basis for habeas corpus in Malaysia is Article 5(1) and (2) of the Federal Constitution, section 25(2) of the Courts of Judicature Act 1964 and section 365 of the Criminal Procedure Code.

However, the conceptual perimeters of life, "liberty" or law are by no means settled. Malaysian jurisprudence is only recently adopting judicial approaches from countries like India where life includes the dignity of life. Such a broad approach to the interpretation of the term life throws open the judicial door to such issues as inhumane conditions in prisons and the terms and conditions on which bail is granted.

For any substantive errors like exceeding the detention period or using the wrong law, the courts are quick in supplying a remedy. Procedural violations of dangerous drugs and preventive detention laws are increasingly inviting judicial intervention. The greatest judicial achievement in the last decade has been that in most personal liberty cases, procedures are being enforced to the hilt. This is conducive to the strengthening of rule of law and constitutionalism in the country.

But the courts are reluctant to interfere if there is allegation that the detaining authority has acted mala fide or unreasonably. In preventive detention cases, especially under the Internal Security Act, there is no judicial review of the subjective discretion of the exercise of power by the executive.

Barring a few exceptional decisions, courts do not go behind a warrant of arrest/detention to examine the adequacy of facts on which the detaining authority exercised its discretion. The discretion is not subjected to an objective test.

Order of mandamus

This is an order to a public authority to perform its public duty. This remedy has great relevance for the enforcement of socio-economic rights.

Declaratory relief

This is a judicial determination of the rights and duties of the parties or the validity of legislation.

Award of damages

If an arrest, detention or other administrative action is contrary to the law, a judicial award of damages can be made. However no damages are awarded for the resulting hardship after arrest even if the accused is ultimately acquitted or discharged. Nor will compensation be given if the charges were withdrawn or there was release without a charge ever being filed.

There is also as yet no system of compensation to victims of criminal injuries from public funds. However, under the Criminal Procedure Code, the court concerned can make an order of compensation against the guilty party.

Public interest litigation

*In keeping with a worldwide trend, Malaysian law prior to 1988 was developing nicely towards a liberal view of locus standi as is evidenced in such cases as *Kuluwante v. Government of Malaysia*. But the liberal trend was reversed by the majority opinion in *UEM v. Lim Kit Siang*.*

However, the idea that public-spirited citizens should be treated as public benefactors and not as busybodies is galloping around the outskirts of the legal system and it is a matter of time before the gates of the legal system open to admit this idea into its portals.

Tribunals and inquiries

Hundreds of such quasi-judicial, adjudicatory or investigatory bodies exist to supply an informal, inexpensive and expeditious technique for resolution of disputes outside the judicial process.

The areas of taxation, land acquisition, employer-employee relations and disciplinary matters in the public and private sectors are most amenable to the jurisdiction of such bodies.

Human Rights Commission

The law relating to such a commission was enacted in 1999. Like the Auditor-General and the Public Complaints Bureau, the commission has no power to prosecute anyone or to reverse any decision.

However, its power to examine documents, to visit places of incarceration, to compel attendance of witnesses and to make recommendations to Parliament and to the public authority against which the complaint was received, is bound to have a salutary effect on law enforcement agencies.

Other remedial measures

A person with a complaint is like a patient in pain. He needs relief no matter where it comes from. A mature legal system must supply a variety of informal, expeditious and inexpensive remedies.

Many such remedies exist, though they need to be strengthened. Legal aid and advice is provided by the government's Biro Bantuan Guaman, the Bar Council's Legal Aid Centre and by innumerable NGOs.

A vigilant media can help to expose violations of human rights, problems of poverty, exploitation and intimidation. More than any other institution, the media can help to inform and educate the citizenry on issues of human rights and human dignity.

A Parliamentary Committee or Caucus on Human Rights and Service Centres by political parties or social action groups can contribute significantly to the exposing of rights violations.

The internationalisation of human rights issues enables victims to complain to such organisations as Amnesty International, Regional Council on Human Rights in Asia, Asian Human Rights Commission,

Pacific Human Rights Commission and the ILO. There is now an International Criminal Court to investigate and punish genocide and crimes against humanity.

Human rights are on the march. Injustice anywhere is regarded as a threat to justice everywhere.

The writer is Professor of Law at UiTM, Shah Alam. Comments: feedback@thesundaily.com

Human rights on the march

RIGHTS without remedies are like lights that do not shine and fires that do not glow.

In every legal system the remedial and redressal part of the law is most important for bridging the gap between theory and reality. In Malaysia, several legal and non-legal mechanisms exist for redressing violations of human rights.

Habeas corpus

For the denial of life "or liberty" contrary to the law," habeas corpus can issue. The legal basis for habeas corpus in Malaysia is Article 5(1) and (2) of the Federal Constitution, section 25(2) of the Courts of Judicature Act 1964 and section 365 of the Criminal Procedure Code.

However, the conceptual perimeters of life," liberty" or law" are by no means settled. Malaysian jurisprudence is only recently adopting judicial approaches from countries like India where life "includes the dignity of life." Such a broad approach to the interpretation of the term life "throws open the judicial door to such issues as inhumane conditions in prisons and the terms and conditions on which bail is granted.

For any substantive errors like exceeding the detention period or using the wrong law, the courts are quick in supplying a remedy. Procedural violations of dangerous drugs and preventive detention laws are increasingly inviting judicial intervention. The greatest judicial achievement in the last decade has been that in most personal liberty cases, procedures are being enforced to the hilt. This is conducive to the strengthening of rule of law and constitutionalism in the country.

But the courts are reluctant to interfere if there is allegation that the detaining authority has acted mala fide or unreasonably. In preventive detention cases, especially under the Internal Security Act, there is no judicial review of the subjective discretion of the exercise of power by the executive.

Barring a few exceptional decisions, courts do not go behind a warrant of arrest/detention to examine the adequacy of facts on which the detaining authority exercised its discretion. The discretion is not subjected to an objective test.

Order of mandamus

This is an order to a public authority to perform its public duty. This remedy has great relevance for the enforcement of socio-economic rights.

Declaratory relief

This is a judicial determination of the rights and duties of the parties or the validity of legislation.

Award of damages

If an arrest, detention or other administrative action is contrary to the law, a judicial award of damages

can be made. However no damages are awarded for the resulting hardship after arrest even if the accused is ultimately acquitted or discharged. Nor will compensation be given if the charges were withdrawn or there was release without a charge ever being filed.

There is also as yet no system of compensation to victims of criminal injuries from public funds. However, under the Criminal Procedure Code, the court concerned can make an order of compensation against the guilty party.

Public interest litigation

In keeping with a worldwide trend, Malaysian law prior to 1988 was developing nicely towards a liberal view of locus standi as is evidenced in such cases as Kuluwante v. Government of Malaysia. But the liberal trend was reversed by the majority opinion in UEM v. Lim Kit Siang.

However, the idea that public-spirited citizens should be treated as public benefactors and not as busybodies is galloping around the outskirts of the legal system and it is a matter of time before the gates of the legal system open to admit this idea into its portals.

Tribunals and inquiries

Hundreds of such quasi-judicial, adjudicatory or investigatory bodies exist to supply an informal, inexpensive and expeditious technique for resolution of disputes outside the judicial process.

The areas of taxation, land acquisition, employer-employee relations and disciplinary matters in the public and private sectors are most amenable to the jurisdiction of such bodies.

Human Rights Commission

The law relating to such a commission was enacted in 1999. Like the Auditor-General and the Public Complaints Bureau, the commission has no power to prosecute anyone or to reverse any decision.

However, its power to examine documents, to visit places of incarceration, to compel attendance of witnesses and to make recommendations to Parliament and to the public authority against which the complaint was received, is bound to have a salutary effect on law enforcement agencies.

Other remedial

measures

A person with a complaint is like a patient in pain. He needs relief no matter where it comes from. A mature legal system must supply a variety of informal, expeditious and inexpensive remedies.

Many such remedies exist, though they need to be strengthened. Legal aid and advice is provided by the government's Biro Bantuan Guaman, the Bar Council's Legal Aid Centre and by innumerable NGOs.

A vigilant media can help to expose violations of human rights, problems of poverty, exploitation and intimidation. More than any other institution, the media can help to inform and educate the citizenry on issues of human rights and human dignity.

A Parliamentary Committee or Caucus on Human Rights and Service Centres by political parties or social action groups can contribute significantly to the exposing of rights violations.

The internationalisation of human rights issues enables victims to complain to such organisations as

Amnesty International, Regional Council on Human Rights in Asia, Asian Human Rights Commission, Pacific Human Rights Commission and the ILO. There is now an International Criminal Court to investigate and punish genocide and crimes against humanity.

Human rights are on the march. Injustice anywhere is regarded as a threat to justice everywhere.

The writer is Professor of Law at UiTM, Shah Alam. Comments: feedback@thesundaily.com

--- end ---