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بِوَسِيْلَتِيْ اِسْلَامِيْ اَنْبِيَا اَرْجُوْا اَجْرًا مِّمَّنْ لَمْ يَنْبَغِ

INCORPORATING INTERNATIONAL HUMAN
RIGHTS STANDARDS INTO THE MALAYSIAN
CONSTITUTION: A CRITICAL ANALYSIS

BY

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the degree of Doctor of Philosophy (Law)

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ABSTRACT

Issue of human rights is the center of many of the most pressing challenges confronting countries throughout the world today. The work that is presented here expounds the challenges to the concept of human rights in a Malaysian context with a view of evaluating their justifications. The study addresses one of the main challenges to the concept of human rights that is of universalism versus cultural relativism debate. Such a challenge should not be treated lightly because cultural difference could be used as a source of justifying violation of rights. In an age of globalisation, the international law on human rights is becoming increasingly relevant. Thus, it would be unacceptable for Malaysia to adopt the traditional view that a nation's treatment of its citizens is a domestic matter and is beyond the concern of international law. This traditional view should be seen as a severe distortion because the promotion and protection of human rights is no longer within the confines of the geo-political parameters of each country. The principles accepted in the Universal Declaration of Human Rights are generally regarded as binding on the international community as a rule of customary international law. The Universal Declaration of Human Rights has gained recognition in most legal systems including that of Malaysia. Indeed the Universal Declaration was looked to by newly independent states as the blueprint on which to establish their constitutions and bill of rights. Having gone through volumes of both primary and secondary sources available on the topic, the author comes up with some general and specific recommendations that can be adopted in incorporating the international human rights standards into the Malaysian Constitution. However, throughout the study, the author admits that in order to incorporate the international human rights standards into the Malaysian Constitution, the participation and cooperation of all the three organs of the State is needed. This is due to the fact that the desired results can only be achieved if these three organs are to work together. For example, we may advocate for the ratification of some of the international instruments or even amend or repeal some of the existing laws which are not in conformity with the international instruments, but still this will require the participation and cooperation of all the three organs of the State. Throughout the study, the author submits that the concept of human rights needs to be viewed from the international standards though cultural and relativist diversity exists. Hence standards adopted as 'minimum' should not be denied universal application. To sacrifice these 'minimum standards' will lead to denial of rights of the individual within a cultural group. Thus, the study is of significance in a Malaysian context because there is lack of knowledge and in-depth understanding on human rights issues. In light of the recent developments, including the passing of an Act of Parliament in Malaysia establishing a National Human Rights Commission, it is evident that ideas on human rights will play an increasingly vital role in an age of globalisation.

ملخص البحث

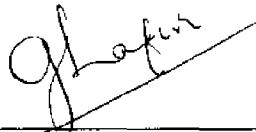
قضية حقوق الإنسان محور للعديد من التحديات الأكثر إلحاحا التي تواجه بلدان اليوم في كافة أنحاء العالم. إن العمل المُقدّم هنا يشرح التحديات لمفهوم حقوق الإنسان في سياق ماليزي مع وجهة نظر تقييم لتبريراتهم. الدراسة تُناقش إحدى التحديات الرئيّة لمفهوم حقوق الإنسان وهي العالمية مقابل النسبية الثقافية نقاشا. مثل هذا التحدي لا يجب أن يعالج سطحيا، لأن الاختلاف الثقافي يُمكن أن يُستعمل كمصدر تبرير لإنتهاك الحقوق. في عصر العولمة، القانون الدولي على حقوق الإنسان يُصبح أكثر علاقة. لذلك، من غير المقبول لماليزيا أن تُبنى وجهة نظر تقليدية التي تعالج مواطنيها كقضية محلية، وليست ذات قلق للقانون الدولي. فوجهة النظر التقليدية يجب أن تُنظر كتشويه حاد، لأن ترقية وحماية حقوق الإنسان، لم يُعودا ضمن حدود المعايير الجغرافية والسياسية لكل بلد. إن المبادئ المقبولة في الإعلان العالمي لحقوق الإنسان، يُعتبر عموما كغطاء للمجتمع الدولي وكقاعدة من القانون الدولي المألوف. كسب الإعلان العالمي لحقوق الإنسان اعترافا في أكثر الأنظمة القانونية متضمنا القانون الماليزي. في الحقيقة يُعتبر الإعلان العالمي عند الولايات حديثة الاستقلال كمخطط ليؤسس دساتيرهم ولوائح حقوقهم. بعد الاضطلاع على مجلدات لكلا المصادر الأساسية والثانوية متوفرة للموضوع، يوصي المؤلف ببعض التوصيات العامة والمعينة التي يُمكن أن تُبنى في دمج معايير حقوق الإنسان الدولية إلى الدستور الماليزي. على أية حال، من خلال الدراسة، يقر المؤلف بأن لكي تُدمج معايير حقوق الإنسان الدولية إلى الدستور الماليزي، يجب الاشتراك وتعاون كل من الأعضاء الثلاثة للدولة مطلوبة. ويعزى ذلك إلى أن النتائج المطلوبة يُمكن أن تُجزأ فقط في حالة تفاعل الأعضاء الثلاثة سوية. على سبيل المثال، قد ندعوهم لتصديق بعض من الوسائل الدولية أو يُعدّلون أو يُطلون البعض من القوانين الحالية التي ليست بالانسجام مع الوسائل الدولية، لكن ما زال سَيُطلب إلى اشتراك، وتعاون كل من أعضاء الدولة الثلاثة. من خلال الدراسة، يقر المؤلف بأن مفهوم حقوق الإنسان من الضروري أن يُنظر من منظور المعايير الدولية مثل ثقافي وتنوع الوجود النسبي. لذلك معايير تُبنى كحد أدنى لا يجب أن يعارض التطبيق العالمي. التضحية بالحد الأدنى من هذه المعايير سؤدي إلى حرمان الافرد من حقوق داخل المجموعة الثقافية. لهذا، تعتبر الدراسة ذات أهمية في إطار ماليزي لقلّة المعرفة والفهم العميق بقضايا حقوق الإنسان. في ضوء التطورات الحديثة، بما في ذلك إجازة قانون برلماني في ماليزيا بتأسيس لجنة حقوق إنسان وطنية، دليل واضح بأن أفكار حقوق الإنسان ستلعب دوراً حيوياً في عصر العولمة.

APPROVAL PAGE

The thesis of Ahmad Masum has been approved by the following:



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DECLARATION

I hereby declare that this thesis is the result of my own investigations, except where otherwise stated. I also declare that it has not been previously or concurrently submitted as a whole for any other degrees at IIUM or other institutions.

Ahmad Masum

Signature.....

Date.....

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**INCOPORATING INTERNATIONAL HUMAN RIGHTS STANDARDS
INTO THE MALAYSIAN CONSTITUTION: A CRITICAL ANALYSIS**

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To my father Masum Abdallah, my late mother Betty Nanyonyo and my beloved wife
Ramlah Zakaria and son Abdallah Ikhlas.

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All praise to Allah (swt) the most Gracious and Most Merciful, by whose Grace and Blessings I have been able to complete this thesis as part of my requirement for my Doctor of Philosophy in Law.

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On a personal note I am eternally grateful to my parents, uncles especially the late Hajj AbdulKarim Abdallah who taught me the art to strive for the best result always in pursuit for knowledge. But he never lived to see me accomplishing this journey. The Almighty Allah called him on 4th June 2004. I am also eternally grateful to my aunts, brothers and sisters, cousins and nephews, my late father-in-law Zakaria bin Abdul Kadir, my mother-in-law Rahmin binti Ilias, my sisters-in-law Roziah and Rokiah, and my brothers-in-law Abdul Rahman, Abdul Rais and Abdul Razak, all of whom deserve the highest praise for their unceasing encouragement and tolerance as a family of my efforts.

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LIST OF CASES

- Abdul Ghani Haroon v. Ketua Polis Negara [2001] 2 MLJ 689.
Ah Thian v. Government of Malaysia [1976] 2 MLJ 112.
Amina v Superintended of Prison, Pengkalan Chepa, Kelantan [1968] 1 MLJ 92
Assa Singh v. Menteri Besar Johore [1969] 2 MLJ 30.
Attorney General Malaysia v. Chiow Thiam Guan [1983] 1 MLJ 50.
Batu Kawan Berhad v. Pentadbir Tanah Daerah Seberang Perai Selatan [2002] 2 MLJ 399 FC.
Bandhua Mukti Morcha v. Union of India & Ors AIR 1984 SC 802.
Chai Choon Hon v. Ketua Polis Daerah, Kampar
Che Ani Itam v. Public Prosecutor [1984] 1 MLJ 113.
Che Omar Che Soh v Public Prosecutor [1988] 2 MLJ 55.
Chia Khin Sze v. the Mentri Besar, State of Selangor [1954] 24 MLJ 105.
Comptroller General of Inland Revenue v. NP [1973] 1 MLJ 165.
Dalip Kuar v. Pegawai Polic Daerah, Bukit Mertajam [1992] 1 MLJ 1.
Dewan Undangan Negeri Kelantan v. Nordin bin Salleh [1992] 1 MLJ 343; [1993] 3 MLJ 344.
Eng Keock Cheng v. Public Prosecutor [1966] 1 MLJ 18.
Gerald Fernandez v. Attorney General, Malaysia [1970] 1 MLJ 28.
Halimatussaadiyah bte Kamaruddin v. Public Services Commission, Malaysia & Anor [1994] 3 MLJ 61.
Hussein bin Ahmad v. Tengku Razaleigh Hamzah and 3 Others (unreported, Election Petition No 33-6-1995).
Jamaluddin Othman v. Minister of Home Affairs [1989] 1 MLJ 410.
Kam Teck Soon v. Timbalan Menteri Dalam Negeri Malaysia & Ors [2003] 1 MLJ 321.
Karam Singh v. Minister of Home Affairs [1969] 2 MLJ 129.
Kerajaan Negeri Johor & Anor v. Adong bin Kuwau & Ors [1998] 2 MLJ 158 (CA).
Ketua Pengerah Jabatan Alam Sekitar & Anor v. Kajing Tubek & Ors and other appeals [1997] 3 MLJ 23.
Ketua Police Negara v AbdulGhani Haroon [2001] 4 MLJ 11
Lai Kim Hon & Ors v Public Prosecutor [1981] 1 MLJ 81.
Lau Dak Kee v. Public Prosecutor [1976] 2 MLJ 229.
Lee Chong Meng v. Suruhanjaya Pilihanraya Malaysia and 2 Others (unreported, Election Petition No.1 of 1995).
Loh Kooi Choon v. Government of Malaysia [1977] 2 MLJ 187.
Loh Kooi Choon v. Public Prosecutor [1977] 2 MLJ 187.
Loh Wai Kong v. Government of Malaysia [1979] 2 MLJ 33.
Madhavan Nair v. Public Prosecutor [1975] 2 MLJ 264.
Malaysian Bar v. Government of Malaysia [1986] 2 MLJ 225.
Mark Koding v. Public Prosecutor [1982] 2 MLJ 120.
Melan b. Abdullah v. Public Prosecutor [1971] 2 MLJ 280.
Meor Atiqulrahman Ishak v. Fatimah Sihi [2000] 5 MLJ 375.
Minister of Home Affairs v. Persatuan Aliran Kesederan Negara [1990]
Mohamad Ezam bin Mohd Noor v. Ketua Polis Negara [2002] 4 MLJ 449.

Nallakaruppan Solaimalai v. Ketua Pengarah Penjara, Malaysia & Ors [1999] 1 CLJ 665
Nappali Peter Williams v. Institute of Technical Education [1999] 2 SLR 569.
Nasharuddin bin Nasir v. Kerajaan Malaysia & Ors (No.2) [2002] 4 MLJ 617.
Ong Ah Chuan v. Public Prosecutor [1981] 1 MLJ 64.
Osman and Anor v. Public Prosecutor [1968] 1 MLJ 137.
Pendakwa Raya v. Datuk Tan Cheng Swee & Anor [1980] 2 MLJ 276.
Phang Chin Hock v. Public Prosecutor [1980] 1 MLJ 70.
Public Prosecutor v. Ismail bin Ishak & Ors [1976] 1 MLJ 183.
Public Prosecutor v. Lau Kee Hoo [1983] 1 MLJ 157.
Public Prosecutor v. Musa [1970] 1 MLJ 108.
Public Prosecutor v. Mohd. Amin & Ors [2001] 3 CLJ 769.
Public Prosecutor v. Oh Keng Seng [1977] 2 MLJ 209.
Public Prosecutor v. Ooi Kee Saik [1971] 2 MLJ 108.
Public Prosecutor v. Param Cumaraswamy [1986] 1 MLJ 518.
Public Prosecutor v. Yee Kim Seng [1983] 1 MLJ 252.
Stations Hotel v. Malayan Railways [1977] 1 MLJ 112.
Selangor Pilot Association v. Government of Malaysia [1977] 1 MLJ 133.
South East Asia Fire Bricks Sdn. Bhd. V. Non Metallic Mineral Products Manufactures Employees Union & Ors [1980] 2 MLJ 165.
Stephen Kalong Ningkan v. Tun Abang Hj. Openg (No.2) [1967] 1 MLJ 46.
Tan Sri Raja Khalid [1988] 1 MLJ 182.
Tan Tek Seng v. Suruhanjaya Perkhidmatan Pendidikan & Anor [1996] 1 MLJ 261.
Teh Cheng Poh v Public Prosecutor [1979] 1 MLJ 50.
Teoh Eng Huat v. Kadhi, Pasir Mas & Anor [1990] 2 MLJ 301.
The City Council of Georgetown v. Government of the State of Penang [1967] 1 MLJ 169.
Theresa Lim Chin and Ors v. Inspector General of Police [1988] 1 MLJ 293.

LIST OF STATUTES

Federal Constitution of Malaysia, 1957.
Federation of Malaya Constitutional Commission, 1956-1957 Report.
Internal Security Act, 1960 (Act 82).
Official Secrets Act, 1972 (Act 88).
Defamation Act, 1957 (Act 286).
Penal Code (F.M.S. Cap 45).
University and University Colleges Act, 1971(Act 30).
Printing Presses and Publication Act, 1984 (Act 301).
Sedition Act, 1948 (Act 15).
Human Rights Commission Act, 1999.
Police Act, 1967 (Act 344).
Dangerous Drugs (Special Prevention Measures) Act, 1985 (Act 316)
Emergency (Public Order and Prevention of Crime) Ordinance 1969.
Essential (Security Cases) Regulations, 1975.
Social Security Act, 1969.
Standard Code of Practice for Access of Disabled Persons to Public Buildings, 1991.
Perlis Apostasy Law.
Societies Act, 1966 (Act 335).
Trade Unions Act, 1959.
Trade Unions (Amendment) Act, 1989 (Act A717).
Universal Declaration of Human Rights, 1948.
International Covenant on Civil and Political Rights, 1966.
International Covenant on Economic, Social and Cultural Rights, 1966.
First Optional Protocol to the International Covenant on Civil and Political Rights, 1966.
Second Optional Protocol to the International Covenant on Civil and Political Rights, 1990.
International Covenant for the Elimination of all Forms of Racial Discrimination, 1965.
Convention on the Elimination of all Forms of Discrimination Against Women, 1979.
Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment, 1984.
Convention on the Right of the Child, 1989.
Declaration on the Rights of Disabled Persons, 1975.
Rio Declaration on Environment and Development, 1992.
Standard Minimum Rules for Prisoners.
The Geneva Declaration, 1924.

LIST OF ABBREVIATIONS

A.I.R	All Indian Report
ACHRO	Asian Coalition of Human Rights Organisations
AHRC	Asian Human Rights Commission
ALRC	Asian Legal Resource Centre
Art/Arts	Article/Articles
ASEAN	Regional Council on Human Rights in Asia
AU	African Union
CA	Court of Appeal
CAT	Convention Against Torture and Other Cruel, Inhuman or Degrading Punishment or Treatment
CEDAW	Convention on the Elimination of all Forms of Discrimination Against Women
CERD	International Convention for the Elimination of all Forms of Racial Discrimination
Chap	Chapter
CROC	Convention on the Rights of the Child
DAP	Democratic Alliance Party
DDA	Dangerous Drugs (Special Prevention Measures) Act
E.g	Example
Edit/Edits	Editor/Editors
Edn	Edition
EPOPCO	Emergency (Public Order and Prevention of Crime) Ordinance
ESCAR	Essential (Security Cases) Regulations
ETC	(Et Cetera) and so forth
GA	General Assembly
GDP	Gross Domestic Product
GNP	Gross National Product
I.E	For-instance
Ibid	(Ibidem) in the same place
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ISA	Internal Security Act
Ltd	Limited
MCA	Malaysian Chinese Association
MIC	Malaysian Indian Association
MLJ	Malaysian Law Journal
NGOs	Non Governmental Organisation's
OSA	Official Secret Act
Para/Paras	Paragraph/Paragraphs
SC	Supreme Court
Sec	Section
UDHR	Universal Declaration on Human Rights

UK	United Kingdom
UKM	Universiti Kebangsaan Malaysia
UM	Universiti Malaysia
UMNO	United Malay National Organisation
UN	United Nations
UNDP	United Nation Development Programme
UPM	Universiti Putra Malaysia
USA	United States of America
UUCA	University and University Colleges Act
Vol/Vols	Volume/Volumes
YDPA	Yang di-Pertuan Agong

CHAPTER ONE

INTRODUCTION

The first chapter is devoted to the background of the study, objectives, statement of the problem, methodology employed in the study, hypothesis, importance of the study, scope and limitations of the study, the outline of the chapters and literature review.

1.1. BACKGROUND OF STUDY

Are human rights universal? Is there a high, common ground of shared ideals in the universal quest for justice and equality? Or do we have international human rights standards that are universal irrespective of our cultural, geographical or historical, political or economic differences? The discussion is inconclusive because terms like East, West, North and South do not mean the same thing to everyone. Hence it is important to note that one of the most persistent theoretical debates concerning international human rights law is known as the “Universalism-Cultural Relativism” problem.

Having stated above that the discussion is inconclusive regarding the universality of human rights and thus casting doubt to the phrase international human rights standards itself, we still have to bear in mind that this debate will continue to be part of an academic discourse. For example, though some may argue there cannot be a universal set of human rights binding and enforceable on all states, due to the rich cultural difference between states and peoples, the international community committed itself to such a universal system by adopting the Universal Declaration of Human Rights. Born out of the atrocities and enormous loss of life during World War

II, the Universal Declaration of Human Rights was created by the United Nations to provide a common understanding of what everyone's rights are. It forms the basis for a world built on freedom, justice and peace.

Though the Universal Declaration of Human Rights forms the basis for a world built on freedom, justice and peace, the Commission for Human Rights which was given the task for drafting the Declaration and adopted as a General Assembly Resolution on 10 December 1948 viewed it as a soft law. This was due to the fact that as a General Assembly Resolution, the Declaration was not a legally binding instrument. It was not intended to be legally binding, as was recognised by Mrs Eleanor Roosevelt (Chair of the UN Commission for Human Rights and the US representative to the General Assembly) when she described the Declaration as a 'common standard of achievement for all peoples of all nations'. It should, however, be noted that the resolution was adopted by 48 votes cast in favour; no votes were cast against, eight states abstained from the voting i.e. Belorussian SSR, Czechoslovakia, Poland, Saudi Arabia, South Africa, Ukrainian SSR. USSR and Yugoslavia.

Furthermore, the uniqueness of the Declaration lay in its setting out of minimum standards in respect of a number of wide-ranging rights and freedoms which were identified within the Declaration; it represented the first attempt to afford comprehensive international protection for the individual. The Declaration provided the foundation for two further United Nations Covenants, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights, both opened and concluded for signature in 1966. The opening of the Covenants for signature represented the next step in the international protection of human rights, namely by way of a legally binding treaty.

Though one may argue that there is no such thing as international human rights standards, it should be noted that the Universal Declaration of Human Rights has gained recognition. For example, the Declaration was looked to by new states as the blueprint on which to establish their constitutions and bill of rights. The Declaration has evolved and is a living instrument and many of the rights and freedoms contained in its articles are now regarded as international customary law. Hence even if a state has not ratified a human rights convention, it could be bound by customary international law to protect some human rights. The impact of international human rights on the international community is profound i.e., it has meant that a State's sovereignty has been limited, as the treatment of an individual by a State is a matter of international concern and not a matter purely for national jurisdiction.

Although there is, as yet, no comprehensive global consensus on what constitutes international human rights standards because of the Asian values versus the Western values debate, the author is of the opinion that based on customary international law such international human rights standards are achievable. Hence it should be noted that even though the idea of human rights was first formulated in the West, it does not mean that it reflects exclusively Western concerns and will not suit other societies. We must not commit the mistake of judging an idea by its historical origin. It is important to separate the historical origin of human rights from the theoretical justifications and factual realisation in the contemporary world. True cultural and relativist diversity exists, but that does not mean that standards adopted as minimum standards are to be denied universal application. We should therefore bear in mind that cultural relativism in seeking to protect certain cultural values should not be used to deny the universality approach of human rights and universalism should not be portrayed as denying cultural diversity.

1.2. OBJECTIVES OF THE STUDY

The study aspires to achieve the following primary objectives:

- (a) To incorporate international human rights standards into the Malaysian Constitution by way of ratifying the conventions which form part and parcel of the human rights standards and also to discuss the role of the rule of law in the promotion and protection of human rights. The reason why we need to look into the role of the rule of law is because of the concept being treated as a fundamental requirement when discussing issues on human rights. For example, it would be impossible to suggest for incorporating international human rights standards into the Malaysian Constitution without, first of all, addressing the state of the rule of law in the country.

Still on the issue of incorporating the international human rights standards into the Malaysian Constitution, this could be done by the legislative organ through amendments to the provisions of the Constitution relating to fundamental rights. Incorporation could also be achieved by way of amending (or repealing) some of our legislation's (laws) that do not seem to be in harmony with international human rights standards. Furthermore, incorporation of the international human rights standard could also be effected by way of judicial decisions and as well as executive acts.

- (b) To address the position of *Suhakam* and see how it has heightened public consciousness regarding human rights situation in the country (Malaysia).

1.3. STATEMENT OF THE PROBLEM (S)

Having stated above in the background of the study that one of the most persistent theoretical debates concerning international human rights law is known as the “Universalism-Cultural Relativism” problem. The following is (are) statement of the problem (s):

- (a) Whether the concept of human rights should be understood as carrying different meanings/definitions for Asia (Malaysia). This is due to the fact that cultural relativists believe rights are defined by the particular cultural, political and social context in which one lives. Relativists assert that because there are no universally shared cultural values and norms, there can be no universal rights and thus no international human rights standards. Taking such an approach or reasoning would imply that this statement of problem alone could be viewed from different dimensions i.e., whose ‘international human rights standards’ are we referring to and who decides that such standards are universal in nature. What about our religious practises? Are we to put our religious practises aside and talk of universality or international human rights standards?
- (b) Apart from the problem mentioned above, it is also important to note that there is another problem in a Malaysian context. In Malaysia, international law is not part of the definition of “law” in Article 160(2) of the Constitution. This means that rules of international law are not part of our *corpus juris* (body of law) unless given the kiss of life by Parliament or the courts. Whether one likes it or not, we cannot therefore run away from the problem we are likely to face in advocating for the incorporation of the international human rights standards into the Malaysian Constitution.

- (c) Still under the statement of the problem, in advocating for the incorporation of international human rights standards we are also faced with how 'human rights' are defined under the Malaysian Constitution. For example, the Human Rights Commission Act 1999 defines human rights as fundamental liberties enshrined in Part II of the Constitution. By virtue of this definition, the Act seems to have limited the scope and application of the Universal Declaration of Human Rights 1948, which is indeed considered as forming part and parcel of the international human rights standards.

1.4. METHODOLOGY

The study is non-empirical; it is mainly based on library research. The literature consists of some primary sources in the form of statutes, rules and regulations, conventions and case law; as well as secondary sources in the forms of books, journals, articles, newspapers etc. Despite the fact that the study is fully a library-based research, it is submitted that eminent scholars or experts in the area of Human Rights were consulted from time to time i.e., seeking their advice in certain areas. All in all, the study entirely was a library-based research irrespective of the advices that were given by certain expertise in the area.

1.5. HYPOTHESIS

The study operates under the following hypothesis:

- (a) Although cultural and relativist diversity exists, it should be remembered that cultural relativism in seeking to protect certain cultural values should not be used to deny the universality approach of human rights or the

international human rights standards and universalism approach should not be portrayed as denying cultural diversity. Hence it is still possible to advocate for the incorporation of the human rights standards into the Malaysian Constitution (the common minimum standards). The incorporation may be effected by various ways or means e.g. amendment process, judicial decisions etc.

- (b) The need to adhere to the concept of the rule of law. This is an important requirement that should not be treated lightly especially while advocating for international human rights standards be incorporated into the Malaysian Constitution. In other words, by addressing this important concept it would act as a guide for us while looking into some Malaysian laws and see as whether such laws are in line with the spirit of the rule of law.

1.6. IMPORTANCE OF THE STUDY

The importance of the study can be summarised as follows:

- (a) The study is indeed important in the Malaysian context because there is lack of knowledge and in-depth understanding on human rights issues. Thus in the light of recent developments, including the passing of an Act of Parliament in Malaysia establishing a National Human Rights Commission, it is evident that ideas on human rights will play an increasingly critical role in the coming millennium. **Therefore**, this is an opportune time to come up with such a study that addresses issues of importance to both the Government and its people as well.