

Constitution and Ethics

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Abstract

Ethics is a very subjective and open-ended concept; it can refer to a constitutional principle that has already been established or it might refer to a principle that has yet to be determined by man. Ethics is difficult to apply due to its subjectivity. Even though identifying the question is challenging, we should not be prevented from embracing it. As we all know, corruption has increased dramatically, despite the establishment of specific agencies to combat it, and it is still far below average. As a result, the goal of this paper is to demonstrate how constitutional ideas can be linked to ethics. This is something lawmakers and other stakeholders should keep in mind when making decisions that affect the nation's interests.

Keywords: Fundamental Rights, Ethics, Constitution, Freedom, Abuse

Introduction

A constitution is a set of fundamental principles and rules that govern a country, state, or social group, defining the government's powers and responsibilities while also giving individuals certain rights. "A collection of action or behaviour rules prescribed by a controlling authority and having binding legal force," according to Black's Law Dictionary (Bryan, 2019). As a result, it's clear that the constitution and the law are essentially identical, especially when it comes to the collection of rules that regulate people.

Malaysia's Federal Constitution was formed in 1957. With a total of 183 articles, the Constitution is divided into fifteen chapters and thirteen schedules. As stated in art 4, it is the supreme law of the land. Everything which contradicts it is null and void because of its primacy. As a result, the Constitution serves as the foundation for all law making, as adherence to the Constitution is essential to its legality.

Brief features of the Federal Constitution

It is necessary to highlight the characteristics of the constitution in order to assess its ethical nature. When it comes to determining whether the constitution is fundamentally driven or not, the boundary between intrinsically driven and non-intrinsically driven rules is always blurry. Due to the tendency to read it mechanically rather than critically, it has a tendency to

become technical and devoid of meaning. Whenever interpreting the constitution, the court sometimes takes a literal interpretation rather than a strategic reading. Given that the law is frequently static, legal actors must determine the most appropriate reading in order to give it value. In the sections below, this article will highlight the fundamental liberty aspects of the constitutional principles are relevant to ethics.

Fundamental Liberties

Human rights and freedoms are referred to as fundamental liberties. They were all enshrined in Articles 5 through 13 of the Federal Constitution. As a result, they can be taken away only if the Constitution allows it. This is a value that is ethically rooted in and of itself. However, there are some drawbacks to freedom. Too much liberty can also be exploited. As a result, even if freedoms of expression, assembly, and association are recognised, they are limited. Restriction of this freedom is crucial since failing to address it could result in civil unrest. As such, only those forms of liberty that are properly and responsibly pursued are permitted.

The right to life and personal liberty is addressed in Article 5. Essential human rights, such as the right not to be deprived of one's life or personal liberty unless it is done in accordance with the law, are protected and guaranteed by Article 5 of the Federal Constitution (Bari, 2009). This is because that person's life and freedom are their personal property, and no one else has any claim or rights over them. Furthermore, the High Court may order the release of a person who has been wrongfully and unlawfully detained by invoking the Habeas Corpus relief. This is how constitutional ethics manifests itself (Shuaib, 2000).

Not only that, if detained, the detainee has the right to inquire as to why they are being kept, as well as the right to be legally represented by a lawyer of their choice. Slavery and forced labour are also outlawed in Article 6. No one may be forced to work as a slave as a result of this. As a result, all forms of coercion are strictly forbidden. Parliament, on the other hand, can adopt legislation mandating citizens to participate in forced duty if it is largely for the country's benefit. The National Service Act of 1952, are an example (Crouch, 1996)

Article 7 demonstrates yet another aspect of constitutional ethics. This clause also safeguards against retroactive criminal law, harsher punishments, and multiple criminal trials. This provision ensured that a person could not be penalised for an act committed under a law that was not in existence at the time. For example, if a legislation prohibiting driving while intoxicated has not been passed at the time the person does so, the penalties imposed by the law do not apply to them. Article 7 also provide a person who has been acquitted or charged with a crime may not be tried again for the same allegation unless the verdict is annulled or the court mandates a retrial.

Equal Rights and Freedom

Article 8(1) of our Federal Constitution states that all Malaysians are equal under the law and enjoy the equal protection of the law. Meanwhile, Clause 2 reads, "There shall be no discrimination against citizens solely on the basis of religion, race, heritage, gender, or birthplace in any law or in the appointment to any office or employment under a public authority, or in the administration of any law relating to the acquisition, holding, or disposition of property, or the establishment or carrying on of any trade, business, profession, vocation, or employment, except as expressly authorised by this Constitution." In short, there

should be no prejudice unless there are specific circumstances that justify it. For instance, a male security guard for a male dormitory and vice versa, and a female-dominated nursing job. Art 8's work can also be seen in *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Another* (1996) 1 MLJ 261, where procedural fairness is implemented. The procedure must be fair in the sense that dismissal for mishandling a relatively little sum of money of \$3000 is disproportionate.

In the *Ultra Badi A/L K Perumal vs Lembaga Tatatertib Perkhidmatan Awam & Anor* (1998) 3 MLJ 676 case too, the combined effect of art 5 and art 8 is applied, and the desire for fairness in both procedure and substance is ignited once the authorities adversely affect any aspect of human life. The plaintiff, Ultra Badi, was a hospital attendant who worked for the second defendant. The presence of morphine was detected in a sample of his urine. The plaintiff was dismissed by the first defendant, the hospital.

The plaintiff's appeal to the Appeal Board was denied. The plaintiff asked for a declaration that his purported dismissal was unconstitutional. The court held that, the plaintiff was not given a reasonable opportunity to be heard, and the first defendant failed to provide the plaintiff with a reasonable opportunity to mitigate the allegations. As a consequence, the decision-making process is fatally flawed. Article 8 depict an example of constitutional ethics in a different light.

Unrestricted or Constrained Freedom of Movement

The restriction of exile and freedom of movement are discussed in Article 9. In addition, everyone has the freedom to freely move about and travel around the country. However, like all other rights, this freedom is subject to constraints. If it threatens public order or health, this right can be restricted, and if it is infringed, it can be punished. Due to the pandemic, we've been quarantined for almost two years. This, of course, has ramifications for our freedom of movement.

The restrictions on movement are particularly visible in security situations. The legitimacy of RRE was questioned in *Assa Singh vs MB Johor* (1969) 2 MLJ because it restricts freedom of movement, but the court found that the regulation was a valid measure to protect public order and security.

The complainant in *Chin v Menteri* (1986) 2 MLJ 235 was arrested under the RRE and detained in police custody before being sent to prison. His imprisonment was based on the fact that, as a registered commodity trader, he defrauded the public by making false promises and declaring incorrect information, causing significant financial loss to investors. Following that, an order was issued mandating him to live in Gua Musang for the next three years from the date of the order. The plaintiff filed a habeas corpus petition to overturn the order. The application was dismissed in the High Court and then again in the Supreme Court on grounds of public order. From the perspective of Article 9 of the Constitution, this is an example of constitutional ethics because allowing crime to go unpunished is akin to undermining the public order system.

Freedom of Speech with Awareness

While Article 10 (1) of the Constitution guarantees every Malaysian citizen the right to freedom of expression, peaceful assembly, and association, these freedoms and rights are not absolute, as Articles 10 (2), (3), and (4) expressly authorise the Parliament to impose restrictions by law for reasons permitted by the Constitution.

These examples demonstrate the limitations of art 10. In *PP V Cumarasamy* (1986) 1 MLJ 518 at 524, the intention to incite violence or public disorder is not a necessary component of the offence; the offence is complete if the words were purposefully published and had the potential to generate ill will. Likewise, the accused cannot claim that his remarks were accurate and honest in *Public Prosecutor v Ooi Kee Saik & Ors* [1971] 2 MLJ 108 and *Fan Yew Teng*. Further MPs are not protected from the law of sedition for their legislative speech and conduct under art. 63(4) parliamentary privilege and 5 of the federal constitution. Another aspect of constitutional justice seen from the perspective of an unruly right to speech, which should not be confused with the freedom to constructively criticise the authorities (Rais, 1995).

Excessive Religious Freedom is Detrimental

Article 11 of the Constitution provides religious freedom, declaring that everyone has the right to profess and practise their own beliefs. Art 11 has its own set of limits. Other religions are not permitted to be preached to Muslims under Article 11(4). The fundamental factors are historical in nature as well as security-related (Harding, 1991). It's for security reasons, as Andrew Harding explained, since Muslims hold the oneness of God in such high respect that preaching anything else would be disturbing and catastrophic. The constitutional ethics of art 11 can be evident in how religious purity is protected, because Islam cannot be practiced in peace and concord without this restraint in art 11(4), as failure to provide that atmosphere may result in backlash, violence, and hostility.

Given the above, morality and the law can be difficult to reconcile. Restricting speech, for example, is a violation of freedom of expression, but when used excessively, it can lead to societal discontent. Yet murder can be justified and acceptable if done in dire need or self-defence. As a result, depending on the circumstances, a restriction of the right may be necessary to enhance society, defend the interests of a group of people, or restrain despotic authority. Here you'll find constitutional ethics, where freedom coexists with power as long as good ideals and goals are advocated.

Conclusion

To summarise, individuals' liberty and freedom must be protected from government aggression, as well as against authoritarian and totalitarian states. Similarly, power must be controlled lest it become uncontrollable. Knowing when to strike the correct balance is critical for the country's overall success for failure to do so will result in the country's disintegration.

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