

## CITIZENSHIP, RELIGION, AND RIGHTS: *A Critical Assessment of Discrimination and Legal Inequality in Malaysia*

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### KEYWORD

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### ABSTRACT

This article critically examines how law and policy in Malaysia operate not only as instruments of governance, but also as mechanisms of exclusion, particularly at the intersections of citizenship, religion, gender, and identity. Drawing on the landmark report *Washing the Tigers* (Equal Rights Trust & Tenaganita, 2012) and utilizing a rights-based, interdisciplinary framework, the study reveals how Malaysia's dual legal system, ethno-religious nationalism, and moral governance produce a stratified regime of belonging and legal recognition. Through qualitative discourse analysis and a postcolonial theoretical lens, the article explores three key domains: (1) stratified citizenship and racialized statehood; (2) religious governance and the erosion of pluralism; and (3) gendered moral regulation and the criminalization of difference. The findings demonstrate that discrimination in Malaysia is not incidental but structural—codified into law and normalized through ideology. The study concludes by calling for a radical reconfiguration of the legal and normative foundations of citizenship in Malaysia, toward a plural, inclusive, and rights-based polity. This article contributes to broader discussions on legal pluralism, postcolonial statecraft, and the politics of difference in Southeast Asia.

### INTRODUCTION

Malaysia, a multi-ethnic and multi-religious federation in Southeast Asia (Lockard et al., 1983), is often portrayed as a model of cultural pluralism and postcolonial development. However, beneath this surface lies a complex architecture of legal, political, and institutional structures that have perpetuated discrimination and inequality across lines of ethnicity, religion, gender, and citizenship. Since its independence in 1957, Malaysia has operated under a framework that constitutionally privileges ethnic Malays and Islam, shaping both the distribution of state power and access to fundamental rights (Milner, 2009).

The dual legal system in Malaysia—comprising parallel civil and Syariah courts—has entrenched a segmented and unequal framework of rights, with profound implications for non-Muslims, women, indigenous communities (including the Orang Asli and the natives of Sabah and Sarawak), and sexual minorities (Shamsul, 1996). While Syariah law ostensibly governs only Muslims, in practice it often spills into the civil domain, especially in areas of family law, interfaith marriage, and inheritance, thereby undermining the principle of equal access to justice (Ibrahim, 1997). For example, in cases involving the conversion of a spouse to Islam, non-Muslim women have encountered systemic ambiguities and jurisdictional conflicts, leading to legal limbo and rights violations—an issue of particular concern noted by the Committee on the Elimination of

## Discrimination Against Women (CEDAW) (Khoo, 2014).

Institutionalized through Article 153 of the Federal Constitution and implemented most expansively via the New Economic Policy (NEP) launched in 1971, the state ideology of *Ketuanan Melayu* (Malay supremacy) has reified an ethnocratic order. The NEP's measures—including quotas for Bumiputera in public universities, employment, corporate equity (30%), land ownership, and government contracts—were justified as affirmative action for redressing historical inequalities, particularly after the 1969 race riots. However, these policies have largely benefited the dominant Malay Muslim majority, while simultaneously excluding ethnic Chinese, Indians, and non-Malay indigenous peoples from equal participation in socio-economic development. As scholars such as Wade (Wade, 2009) have argued, this has fostered a system of ethnocracy rather than meritocracy.

In tandem with these structural inequalities, the legal landscape in Malaysia has also exhibited authoritarian tendencies that curtail fundamental civil liberties (Hack & Wade, 2009). A suite of laws—including the Sedition Act 1948, the Communications and Multimedia Act 1998, and state-level Syariah criminal enactments—have been used to suppress dissent, restrict freedom of expression, and enforce conservative moral codes (Mohd Hafiz Ramlee and Muhammad Ihsan Norkhair, 2016). These legal instruments have been selectively applied to target opposition figures, human rights activists, religious minorities, and LGBTQ+ individuals, thereby narrowing civic space and entrenching impunity for state-aligned actors.

The discriminatory application of these laws is not merely anecdotal but systemic. Opposition media outlets have had their licenses revoked, activists prosecuted for sedition, and ordinary citizens subjected to “moral policing” under Syariah regulations (Shukri, 2023). For instance, unmarried Muslim couples have been detained for “khalwat” (close proximity), and interracial relationships have been harassed on religious and ethnic grounds. Meanwhile, authorities often fail to act against inflammatory speech or hate propaganda issued by pro-government figures, reflecting a clear bias in enforcement and further deepening the erosion of rule of law and equal protection principles (Muin, 2017).

International human rights bodies, including Human Rights Watch, Amnesty International, and the UN Human Rights Committee, have repeatedly flagged Malaysia's legal framework as incompatible with international norms on equality, non-discrimination, and freedom of belief and expression. Malaysia's refusal to ratify key international treaties—such as the International Covenant on Civil and Political Rights (ICCPR) and the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD)—is indicative of its reluctance to fully commit to universal human rights standards (McQuigg, 2007).

In summary, the convergence of ethno-religious hegemony, legal stratification, and political authoritarianism in Malaysia creates a matrix of systemic discrimination. This layered exclusion undermines the constitutional guarantees of equality and universal citizenship, and requires urgent re-examination in light of evolving global norms and domestic aspirations for justice and pluralism (Sreedharam & Jalil, 2013).

Building on the extensive empirical findings and legal analyses presented in the Equal Rights Trust and Tenaganita's landmark report *Washing the Tigers: Addressing Discrimination and Inequality in Malaysia* (Baqutayan, 2020), this article offers a critical interrogation of how law and policy in Malaysia function not merely as tools of governance, but as active mechanisms of exclusion and control. The report provides comprehensive documentation of discriminatory practices embedded in both constitutional frameworks and ordinary legislation, revealing how overlapping axes of marginalization—particularly those relating to citizenship, religion, ethnicity, gender, and sexual identity—are codified and operationalized through state structures.

Rather than ensuring equal treatment, Malaysia's legal and policy regimes have produced what the report terms “legally sanctioned discrimination.” This includes the differential

recognition of identity documents for indigenous persons and migrants; the denial of legal standing to non-Muslims in family disputes involving Muslim converts; the use of Syariah criminal law to penalize consensual same-sex relations; and the disproportionate restrictions on religious freedom imposed on non-Muslim communities and so-called ‘deviant’ Muslim sects. These practices are not incidental but symptomatic of a state apparatus that defines rights through a majoritarian ethno-religious lens (Pietsch & Clark, 2014).

This article adopts an interdisciplinary and rights-based analytical framework to investigate how the intersections of legal identity and socio-political belonging generate hierarchies of access—to justice, to state protection, and to meaningful political participation. It engages perspectives from legal pluralism, critical citizenship studies, and postcolonial political theory to illuminate the structural logics through which certain populations—stateless persons, refugees, religious minorities, gender-nonconforming individuals, and non-Malay citizens—are rendered invisible or illegible within the dominant legal order.

Ultimately, this article contends that the Malaysian state’s selective deployment of law reproduces a stratified model of citizenship that is incompatible with the principles of substantive equality and non-discrimination. In response, it argues for the necessity of reframing legal reform not merely as institutional correction but as a process of decolonizing the normative assumptions that underpin exclusionary citizenship regimes.

This article argues that Malaysia’s legal-political framework embeds systemic inequality through both explicit legal provisions and discretionary state practice. The analysis focuses on four interrelated domains: (1) ethno-religious nationalism and the legal codification of Malay-Muslim identity; (2) the marginalization of non-citizens and undocumented persons; (3) gender and sexual orientation-based discrimination; and (4) restrictions on civil and political freedoms. By centering the lived experiences of marginalized groups and drawing on documented legal cases and policy critiques, the article offers a grounded critique of state-sponsored inequality and explores pathways toward a more inclusive and rights-based legal order in Malaysia.

## THEORETICAL FRAMEWORK

Understanding the legal and political architecture of discrimination in Malaysia requires a multidimensional theoretical approach—one that captures both the normative ideals of citizenship and the lived experiences of exclusion across intersecting lines of identity. This article integrates four complementary theoretical lenses: *cultural citizenship*, *legal pluralism*, *intersectionality*, and *cultural hegemony*, each of which offers a critical vantage point to examine how rights are conferred, denied, or negotiated within Malaysia’s complex socio-legal landscape.

First, the concept of cultural citizenship, as articulated by Rosaldo (Rosaldo, 1994) and later expanded by Ong (Ong, 1996), provides a foundational lens for analyzing how legal membership in the state (formal citizenship) is often decoupled from full social belonging. Cultural citizenship refers to the right to be different while participating fully in the nation-state—an ideal that remains unrealized in contexts where legal frameworks privilege certain ethno-religious identities over others. In Malaysia, the preferential treatment of *Bumiputera* (particularly ethnic Malays) through state policy and constitutional guarantees creates a stratified regime of citizenship. Non-Malay citizens—despite holding legal status—are often denied full cultural recognition, political legitimacy, and equitable access to public resources. Cultural citizenship thus enables an interrogation of how legal inclusion may coexist with social and cultural marginalization.

Second, legal pluralism, as conceptualized by Griffiths (1986) and later advanced in postcolonial legal studies (Merry, 2006), offers a framework for understanding the coexistence of multiple normative orders within a single legal system. Malaysia’s dual system of civil and Syariah

law exemplifies a form of *state-sanctioned legal pluralism*, where different legal regimes apply depending on religious affiliation. While presented as a form of legal accommodation, this system reinforces asymmetric power relations by subordinating the rights of non-Muslims, women, and religious minorities to majoritarian religious interpretations. Legal pluralism, in this context, becomes a tool not of multicultural justice, but of selective recognition and institutionalized inequality.

Third, the framework of intersectionality, introduced by (Cho et al., 2013), is crucial for analyzing how systems of oppression interact to produce compounded forms of discrimination. In Malaysia, ethnicity, religion, gender, sexuality, and migration status intersect to shape individuals' exposure to legal precarity and social exclusion. For instance, a stateless indigenous woman faces not only gender-based and racialized discrimination but also structural invisibility in the legal system due to the lack of official documentation. Intersectionality moves analysis beyond single-axis explanations of injustice and enables a nuanced reading of how overlapping systems of domination are embedded in law and policy.

Finally, the Gramscian notion of cultural hegemony ((Gramsci, 2000) informs this article's critique of the ideological underpinnings of Malaysia's discriminatory legal order. Cultural hegemony refers to the normalization of dominant values and worldviews through institutions such as education, religion, law, and media, which operate to secure the consent of the governed. In Malaysia, state-sponsored narratives of *Ketuanan Melayu* and Islamic orthodoxy have been institutionalized through constitutional provisions, national curricula, and the selective application of Syariah law. These hegemonic discourses serve to legitimate the marginalization of dissenting voices—be they from religious minorities, LGBTQ+ individuals, or political opposition groups—by constructing them as deviant or subversive to national identity.

Together, these four theoretical perspectives form an analytical scaffold for this study. Cultural citizenship helps uncover the gap between legal status and substantive belonging; legal pluralism reveals the hierarchical structuring of legal recognition; intersectionality captures the layered nature of exclusion; and hegemony theory exposes how ideology sustains structural inequality. This integrated framework allows for a critical and context-sensitive examination of how law and identity intersect in Malaysia, not as abstract legal principles, but as lived experiences shaped by power, history, and resistance.

## RESEARCH METHODOLOGY

This study adopts a qualitative-critical methodology grounded in interpretive policy analysis and legal ethnography (Coutin & Fortin, 2015; Ledvinka, 2021). Rather than merely describing the content of laws or policy instruments, the research seeks to uncover the socio-political logics and power relations that underpin the production, enforcement, and lived consequences of Malaysia's legal frameworks. The analysis is oriented by a constructivist epistemology, which assumes that law is not a neutral or static institution but a dynamic and contested space where meanings, identities, and exclusions are continuously negotiated.

The primary source for this inquiry is the report *Washing the Tigers: Addressing Discrimination and Inequality in Malaysia* (The Equal Rights Trust & Tenaganita, 2012), which provides a rare and comprehensive documentation of structural discrimination across various domains in Malaysia. The report is based on over 100 interviews, including with civil society activists, legal practitioners, indigenous leaders, women's rights defenders, LGBT individuals, refugees, and stateless persons. It is also supported by documentary analysis of Malaysian constitutional law, federal and state legislation, court decisions, policy documents, and international human rights reports. In this study, the report is treated not simply as a source of data, but as a rich text to be *re-read* through the lens of critical theory and intersectional analysis.

In engaging with these materials, the study uses critical discourse analysis (Baumgarten & Schröter, 2017; Fairclough & Fairclough, 2013; van Dijk, 2006) to examine how legal language and policy texts produce normative categories of citizenship, deviance, and legitimacy. Discursive constructions such as “Malay supremacy,” “national security,” or “moral offense” are not taken at face value, but deconstructed to reveal their ideological functions in maintaining ethnocratic and patriarchal state structures. This approach is complemented by narrative legal analysis, which centers on how the voices and experiences of marginalized communities expose the contradictions, silences, and exclusions within the legal system.

Additionally, the study adopts a comparative-reflective lens by situating Malaysia within broader discussions on legal pluralism, postcolonial statecraft, and Southeast Asian rights regimes. This comparative angle allows for contextualizing Malaysia’s model of ethno-religious governance within global patterns of discrimination, while remaining attentive to local specificities. The goal is not to offer a universalist critique, but to produce a grounded and context-sensitive understanding of how legal inequality is structured and normalized within Malaysia’s political order.

Finally, this research is shaped by a critical positionality that acknowledges the limits and responsibilities of scholarship when engaging with the voices of oppressed communities. Rather than speaking *for* these communities, the study seeks to amplify their narratives, while interrogating how knowledge production in law and human rights is often complicit in reifying the very hierarchies it seeks to dismantle (Smith, 2006; Spivak, 2004). This reflexive orientation ensures that the research is not merely extractive, but committed to ethical engagement and epistemic justice.

In sum, the methodology employed in this study foregrounds critical reading, interdisciplinary synthesis, and decolonial sensitivity in order to interrogate how legal structures in Malaysia both reflect and reproduce broader systems of inequality. It is through this methodological lens that the analysis of the intersections between citizenship, religion, gender, and law is developed in the sections that follow.

## FINDINGS AND DISCUSSION

### Stratified Citizenship and the Politics of Legal Belonging

Citizenship in Malaysia operates not only as a legal status but as a hierarchical construct mediated by race, religion, and bureaucratic recognition (Ormond et al., 2006). The Federal Constitution, particularly Article 153, formalizes a preferential regime for the Malay-Muslim majority under the banner of *Bumiputera* privileges. While framed as corrective affirmative action through the New Economic Policy (NEP), this framework has effectively institutionalized ethno-national citizenship, wherein non-Malay citizens—especially ethnic Chinese and Indian Malaysians—face systemic exclusion from equitable access to education, employment, housing, and political participation.

Beyond ethnic categorization, the bureaucratic processes of documentation and legal recognition have created layers of legal invisibility, especially among stateless persons, refugees, and undocumented migrants. According to the *Washing the Tigers* report, tens of thousands of individuals in Sabah and Sarawak remain effectively stateless, including indigenous persons whose births were never officially registered and children of irregular migrants who are denied nationality by both Malaysia and their parents’ countries of origin (The Equal Rights Trust & Tenaganita, 2012).

This stratification is more than administrative—it has tangible effects on access to rights. Stateless individuals are denied healthcare, education, employment, and legal protection. The lack

of documentation renders them vulnerable to arrest, detention, and deportation without due process. The UNHCR has also documented that even recognized refugees—such as Rohingya Muslims—lack legal standing in Malaysia due to the country's non-ratification of the 1951 Refugee Convention.

Moreover, citizenship itself is securitized and politicized. The issuance of identity cards (MyKad) is often subjected to racial and religious scrutiny, with Muslim status encoded into the documentation. This creates a legal infrastructure of belonging that embeds privilege into identity documents and reduces citizenship to a racialized and religiously bounded category. Non-Muslim citizens are routinely reminded of their “second-class” status—both symbolically and materially—through government rhetoric, state-controlled media, and discriminatory resource distribution.

In effect, Malaysia's citizenship regime reflects a politics of conditional inclusion, where full membership in the national community is predicated not only on legal status but on conformity to ethno-religious norms. This undermines the constitutional promise of equality and creates a tiered system of rights access that violates the principle of substantive citizenship.

### **Religious Governance and the Limits of Pluralism**

Malaysia's commitment to religious pluralism is constitutionally ambiguous and institutionally constrained. While Article 3 of the Federal Constitution recognizes Islam as “the religion of the Federation,” it also ostensibly guarantees freedom of religion under Article 11. In practice, however, these provisions are interpreted in ways that entrench the primacy of Islam within state institutions, thereby marginalizing religious minorities and suppressing alternative forms of belief.

One of the most enduring mechanisms of this marginalization is the dual legal system, whereby Syariah courts operate parallel to civil courts for matters concerning Muslims—particularly in personal and family law (Y. Fong & Ishak, 2010; Seo, 2023). While officially confined to Muslims, Syariah authority frequently intrudes into areas affecting interfaith families, conversion cases, and child custody disputes, producing legal liminality for non-Muslim individuals entangled in Islamic legal jurisdictions. High-profile cases such as *Lina Joy* (2007) and *Indira Gandhi* (2018) illustrate how jurisdictional conflicts between civil and Syariah courts have led to prolonged legal uncertainty, denial of fundamental rights, and deepened religious polarization (Y. L. Fong, 2011; Neoh, 2008).

In tandem with legal entrenchment, the Islamization of public institutions—including education, law enforcement, media, and the bureaucracy—has narrowed the space for religious diversity. Islamic moral values are increasingly treated as the ethical foundation of public policy, and dissenting religious or secular perspectives are often delegitimized. The *Washing the Tigers* report details multiple cases where non-Muslim places of worship have faced disproportionate restrictions in construction approvals, zoning laws, and public funding—particularly in contrast to the expansive institutional support provided to mosques and Islamic education programs.

Further compounding this issue is the criminalization of “deviant” Islamic sects, such as Shi'a Muslims, Ahmadiyyah, and groups labeled as *ajaran sesat* (heretical teachings). These communities are subject to surveillance, raids, and arrest under state Syariah enactments, despite international human rights standards that guarantee the freedom of religion and belief. Such laws reflect a state-driven Sunni orthodoxy that conflates religious deviation with national security risks, thus treating theological difference as political subversion.

The state's approach to religion thus operates within what An-Na'im (1990) describes as a “managed pluralism”—where the appearance of religious tolerance masks deep structural asymmetries in power, recognition, and protection. Non-Muslim citizens, although numerically significant, are often treated as peripheral to the moral and political fabric of the nation. Their rights are not unconditionally protected but are subjected to the interpretive authority of dominant Islamic jurisprudence and political discretion.

In this climate, religious governance becomes both a site of identity regulation and a tool of state legitimization. The invocation of Islam as the moral compass of national development serves to consolidate the hegemony of the Malay-Muslim political elite while excluding dissenting voices from the legal and moral community. The consequence is not only the erosion of religious freedom but the closure of public space for plural discourse, undermining democratic pluralism and deepening intercommunal mistrust.

### **Gender, Morality, and the Criminalization of Difference**

In Malaysia, the intersection of gender, sexuality, and religious morality forms one of the most potent arenas for state control and legal discrimination. The state apparatus—particularly through Syariah legal frameworks and moral policing—constructs normative gender roles and heterosexuality as central to national identity and Islamic virtue. Consequently, women, gender non-conforming individuals, and LGBTQ+ communities are subjected to legal regimes that criminalize bodily autonomy, regulate personal conduct, and delegitimize alternative identities.

For women, Syariah law governs not only marriage, divorce, and inheritance, but also broader social conduct. The *Washing the Tigers* report documents numerous cases in which women are disadvantaged in divorce proceedings, denied custody rights, or required to navigate male-dominated religious courts that often interpret the law in patriarchal terms. In some states, Syariah enactments allow for the prosecution of women for dressing “indecently”, being in *khalwat* (close proximity) with men, or giving birth out of wedlock. These laws function as instruments of gendered surveillance, punishing women for moral transgressions as defined by conservative religious norms.

At the same time, sexual minorities in Malaysia face systemic criminalization and social erasure. Both civil and Syariah laws criminalize consensual same-sex relations—most notably Section 377 of the Penal Code, a colonial-era statute that punishes “carnal intercourse against the order of nature” with up to 20 years in prison. Complementing this, Syariah enactments in many states criminalize “liwat” (sodomy), “musahaqah” (female same-sex acts), and cross-dressing, enabling arrests, imprisonment, public shaming, and forced religious rehabilitation.

These legal sanctions are not merely symbolic. The report includes testimony from LGBTQ+ individuals who have faced police entrapment, blackmail, and public humiliation, as well as systemic denial of access to healthcare, employment, and justice. Transgender women, in particular, are frequently targeted under Syariah “cross-dressing” laws (e.g., Section 66 of Negeri Sembilan’s Syariah Criminal Enactment), despite rulings from civil courts recognizing their constitutional rights. This duality of legal systems creates conflicting standards, where recognition in one jurisdiction can be overruled by criminalization in another.

What emerges is a moral state that conflates personal identity with national security, treating deviations from heteronormative and patriarchal standards as existential threats to social order. As Foucault (1978) theorized in *The History of Sexuality*, modern states often deploy morality as a technology of power to regulate populations—constructing sexuality not as private, but as politically salient. In Malaysia, this is manifest in public discourse that associates LGBTQ+ existence with Western decadence, religious heresy, or psychological illness—narratives actively promoted by political elites, religious authorities, and mainstream media.

Moreover, legal enforcement is often supplemented by extra-legal moral policing, including community-level surveillance, public denunciation, and online harassment. The lack of legal protections for victims of gender-based violence or anti-LGBTQ+ hate crimes further illustrates the state’s complicity in normalizing discrimination. The result is a climate of institutional silence and societal hostility, in which marginalized groups must navigate survival rather than justice.

Nonetheless, despite the oppressive legal terrain, resistance persists. Civil society organizations,

feminist networks, and queer activists continue to contest these norms—through strategic litigation, public education, and transnational advocacy. Their efforts signal not only the possibility of legal reform, but also the emergence of counter-publics that reimagine morality, citizenship, and belonging beyond the state's narrow definitions.

## CONCLUSION

This study has critically examined the legal and institutional foundations of discrimination in Malaysia by interrogating how citizenship, religion, gender, and identity intersect within a stratified system of governance. Drawing on the findings of *Washing the Tigers* and framed through interdisciplinary theoretical lenses, the analysis demonstrates that Malaysia's constitutional and policy frameworks produce not only inequality, but institutionalized regimes of exclusion that operate through law, discourse, and bureaucratic practice.

Citizenship, far from being a universal legal status, is revealed as a racialized and conditional construct, where full belonging is predicated on alignment with a narrowly defined Malay-Muslim identity. The dual legal system, privileging Syariah law, has extended religious governance into public institutions and private life—eroding pluralism, especially for religious minorities and women. Meanwhile, the criminalization of gender and sexual difference under both civil and religious codes has legitimized state-sanctioned moral policing and curtailed basic rights to dignity and expression.

Taken together, these dynamics constitute a hegemonic model of nationhood rooted in ethno-religious supremacy and sustained through legal formalism and moral authoritarianism. However, the persistence of resistance from civil society, indigenous groups, feminist movements, and queer activists points to the presence of counter-hegemonic spaces—alternative imaginaries of justice, pluralism, and inclusive citizenship.

This article argues that any genuine legal reform in Malaysia must go beyond procedural adjustments. It must involve a transformative rethinking of the normative foundations of the state—decoupling citizenship from ethno-religious essentialism and embracing a rights-based, inclusive, and plural conception of national belonging. This demands not only constitutional and legal revision, but also a cultural and epistemic shift in how law, identity, and power are understood in the Malaysian polity.

In advancing this critique, the study contributes to broader debates in postcolonial legal studies, Southeast Asian politics, and critical human rights discourse. It also underscores the urgent need to center the voices of those structurally silenced in mainstream legal and political narratives. Only by dismantling the legal architectures of inequality can Malaysia move toward a more just, democratic, and inclusive future.

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