

OVERVIEW

2015 IN A NUTSHELL: 2015 has been inundated with a deluge of administrative clamp downs to the constitutional right of freedom of expression in Malaysia. Innocuous solecism and mordant comic strips were the subject of criminal prosecution. A number of activists, lawyers, editors, and students were arrested, remanded and/or prosecuted for expressing their opinions over Twitter, articles, and through cartoons. The Home Minister had issued a total of 28 Printing Presses and Publications (Control of Undesirable Publications) Orders in the same year banning the circulation of a total of 47 books, amongst others, 3 books by the cartoonist, Zunar as well as “Any yellow coloured clothing and which contains the words ‘Bersih 4’” and “Any other printed material and pamphlets which leads to Bersih 4 Rally”. Suspension orders were issued to two publications under the wing of The Edge Media Group. On an unprecedented move, the Inspector General of Police (IGP) of Malaysia took on the role of active policing and monitoring over social media platform, in particular, on Twitter. As aptly put by Human Rights Watch's Asia deputy director, Phil Robertson, the IGP *"patrols the Twittersphere like a shark in open water"*.

On the whole, year 2015 has not only been a tough year for the Fourth Estate of the country but it has also thrown woebegone and hermetic gossamer over the freedom of expression in Malaysia.

THE JURISPRUDENCE ASPECT

THE PAST: The cases which touch on the right of freedom of expression revolve around offences under two pieces of legislation in particular - the Sedition Act 1948¹ and Printing Presses and Publications Act 1984 ('PPPA'). The following are summary of a few important court decisions stretching from October 2014 to early 2016:

- **SEPAKAT EFEKTIF SDN BHD V. MENTERI DALAM NEGERI & ANOR AND ANOTHER APPEAL [2015] 2 CLJ 328 (COURT OF APPEAL) – 9th OCTOBER 2014**

Keywords – Publisher – PPPA

Background - The subject matter of the appeals was in relation to the banning of two books by the Deputy Minister for Home Affairs under s. 7(1) of the Printing

¹ Please refer to Appendix 1 for extract of the Sedition Act, 1948.

Presses and Publications Act 1984 ('PPPA')², namely, 'Perak Darul Kartun' and '1 Funny Malaysia', containing a compilation of cartoons. Both publications were political satires and parodies. The prohibition imposed on the two publications was wide-ranging and absolute, and based on the reason that they 'are prejudicial to public order'. The order was challenged in the High Court on the grounds of illegality, procedural impropriety and irrationality.

Court of Appeal's decision - The Court of Appeal consisting of a panel of 3 judges allowed the appeal. Court of Appeal Judge, Mohamad Ariff Yusof made *inter alia* the following important observations: (i) *"The exercise of Ministerial discretion under s. 7 of the PPPA affected a citizen's freedom of expression under the Constitution. Where an exercise of discretion has a constitutional dimension, it is incumbent on the court to examine that **exercise more vigilantly, and not rely solely on the ipse dixit of the Minister**";* (ii) *"The publications had made fun of, insulted, demeaned, ridiculed, been contemptuous of and possibly defamed the leadership and essential institutions of Malaysia. There was scant evidence to support any allegation of sedition or acts having a seditious tendency. The law of sedition was being used as a convenient peg to control freedom of expression. The facts demonstrated more a case of politicians and institutions being held to public odium and did not support a finding of the publications being acts prejudicial to public order. Public odium cannot be so conveniently equated with public order, let alone sedition"*

Judge Varghese George went on to add that *"If at all any of the material had the tendency of being defamatory in nature, the individuals or groups affected had recourses through the court. The Minister ought to have been slow to abrogate to himself the settled function of the courts, as adequate checks and due process were in place and readily available to any aggrieved party to counter any perceived abuse of the constitutionally guaranteed freedom of speech and expression. The grounds advanced by the Minister to act pre-emptively, by making a blanket 'ban order' on the two books, was therefore neither acceptable nor justifiable.*

Remark – The finding of the Court of Appeal that *"public odium cannot be so conveniently equated with public order, let alone sedition"* has the effect of restricting the ambit of "seditious tendency" as defined in the Sedition Act. Unfortunately this case may not be able to be treated as *"stare decisis"* as it is a case on PPPA and not the Sedition Act. It however serves as an excellent precedent in monitoring and restricting the arbitrary exercise of power of the Minister under the PPPA.

- **THE EDGE COMMUNICATIONS SDN BHD v. HOME MINISTRY OF MALAYSIA (HIGH COURT) – 21ST SEPTEMBER 2015**

Keywords – Publisher – PPPA

Background – On July 24th, the Home Ministry of Malaysia had issued an order pursuant to Section 7 of the Printing Presses and Publications Act 1984 to suspend the publishing permits of two publications of The Edge Communications

² Please refer to Appendix 2 for extract of the PPPA.

Sdn Bhd (The Edge), namely The Edge Weekly and The Edge Financial Daily, with effective from July 27th for a period of 3 months. In a statement, the Minister said that the two publications were suspended as the headings and reports could create negative public perception of 1Malaysia Development Bhd (1MDB), and hence towards the government and national leadership. The Edge had applied for an order of *certiorari* for the court to quash the decision of the Minister.

High Court's decision - On 21st of September 2015, the High Court had ruled in favour of The Edge and ruled that the Home Ministry had acted irrationally and illegally by issuing the suspension order, also ruling that the latter had breached procedural fairness when issuing a show-cause letter.

Development - The Attorney General Chambers of Malaysia has on 23rd of September filed an appeal to the Court of Appeal against the Kuala Lumpur High Court's decision.

Note - Following the suspension order in July, a coalition of media groups comprising of Gerakan Media Marah (Geramm), the Reporters Sans Frontieres (RSF), the Institute of Journalists (IOJ), the Centre for Independent Journalism and the Foreign Correspondents Club of Malaysia had organized a rally on the 8th of August to protest against the suspension and to call for the abolishment of the Printing Presses and Publications Act 1984. Hundreds of local activists, lawyers, and the public attended the rally.

Remark - The High Court's ruling marks a triumph for those who champions freedom of expression. Following the Sepakat's case above, the judiciary has played an important check and balance role to keep the subjective power of the Minister in tow.

- **PP v. AZMI SHAROM [2015] 8 CLJ 921 (FEDERAL COURT) – 6TH OCTOBER 2015**

Keywords - Law Lecturer Associate Professor – Sedition Act

Background - The accused, a law lecturer associate professor at the University of Malaya, was charged under Section 4(1)(b) and alternatively Section 4(1)(c) of the Sedition Act 1948, for using seditious words in his online article published on Malay Mail online on 14th August 2014 when commenting on the political crisis in the State of Perak. The seditious words are *"You don't want a repeat of that, where a secret meeting took place..."* and *"I think what happened in Perak was legally wrong. The best thing to do is do it as legally and transparently as possible."*

Federal Court decision - On 6th October 2015, the apex of Malaysian judiciary, the Federal Court consisting a panel of 5 judges has on the application of the accused for determination of questions of law ruled that (i) Section 4(1) of the Sedition Act 1948 does not contravene Article 10 (2) of the Federal Constitution. Chief Justice Arifin Zakaria in delivering his judgment said that *"Article 10(1)(a) provides for freedom of speech, assembly and association. It is, however, commonly acknowledged that the rights conferred by the said article are not absolute. By Article 10(2), Parliament is given the right to impose such restrictions as it deemed necessary or expedient in the interest of the security of the Federation and other grounds enumerated in cl. (2)(a)";* and (ii) the Sedition Act

1948 is valid and enforceable under the Federal Constitution. The case was then immediately remitted to the Sessions Court for continuation of proceedings.

Development - On 19th February 2016, after the close of prosecution case at the Sessions Court proceedings, the Deputy Public Prosecutor informed the court that the prosecution did not intend to proceed and the Court has acquitted and discharged the accused.

- **PP v. HISHAMUDDIN MD RAIS (HIGH COURT) – 15TH JANUARY 2016**

Keywords - Activist – Sedition Act

Background - Activist Hishamuddin Md Rais was charged under Section 4 of the Sedition Act for his speech at a public forum on May 13th, 2013 which incited the public to overthrow the government through street protests. The Sessions Court had on January 9th, 2014 found Hishamuddin guilty and fined him RM5,000.00. Hishamuddin appealed against the conviction while the prosecution appealed for a graver sentence.

High Court's decision – Judicial Commissioner Datuk Nordin Hassan upheld the conviction by the Sessions Court and allowed the prosecution's appeal for a more deterrent sentence by sentencing Hishamuddin to 9 months' imprisonment term.

Appeal – The High Court allowed for stay of execution pending Hishamuddin's appeal to the Court of Appeal.

- **ADAM ADLI ABDUL HALIM v. PP (HIGH COURT) – 18TH FEBRUARY 2016**

Keywords – Student Activist – Sedition Act

Background – Adam was charged under Section 4(1)(b) of the Sedition Act 1948 and found guilty of the same by the Sessions Court on September 19th, 2014 for the remarks he made on May 13th, 2013, calling for the Malaysian public to oust Prime Minister Najib Razak and his Barisan Nasional administration. Adam was sentenced to one year's imprisonment. Adam appealed to the High Court.

High Court's decision – The presiding judge Abdul Karim Abdul Rahman upheld the decision of the Sessions Court in finding Adam guilty of sedition, but ruled that a year in prison was excessive as the student activist's public comments did not result in "negative reactions" towards the Federal Government and replaced the imprisonment term with RM5,000 fine.

- **MARIA CHIN & 2 ORS v. HOME MINISTER (HIGH COURT) – 2ND FEBRUARY 2016**

Keywords – BERSIH 4 – PPPA – judicial review

Background - Maria Chin, treasurer Masjaliza Hamzah and national representative Fadhiah Nadwa Fikri of BERSIH, the Coalition of Free and Fair Elections have challenged the Home Minister in a judicial review application in relation to the Printing Presses and Publications (Control of Undesirable

Publications) Order No.22 of 2015 concerning the ban on the yellow Bersih 4 t-shirts. The order was gazette on the 27th August 2014 and came into effect on August 28th. The order, issued by Home Minister Datuk Seri Ahmad Zahid Hamidi under Section 7(1) of the PPPA, stipulates that: “*The printing, importation, production, reproduction, publishing, sale, issue, circulation, distribution or possession of the publication described in the Schedule which is likely to be prejudicial to public order, likely to be prejudicial to security, likely to be contrary to any law and likely to be prejudicial to national interest are absolutely prohibited throughout Malaysia.*”

High Court’s decision - Judge Datuk Haji Mohd Yazid Haji Mustafa ruled that the Minister’s decision in making the order does not suffer from any illegality, irrationality, or procedural impropriety.

Development - The Plaintiffs have appealed to the Court of Appeal. Spoken to the lawyers representing the Plaintiffs in this case mid March 2016 and was told that the High Court judge had yet to provide his written judgment.

THE ONGOING/CASES TO WATCH OUT IN 2016: International Commission of Jurists (ICJ) has reported a total of 37+1 cases investigated under the Sedition Act 1948 in year 2015. Amongst the individual investigated are Mr. Ho Kay Tat, publisher and CEO of The Edge Media (media group) and Mr. Jahabar Sadiq, the CEO of The Malaysian Insider (online news portal). Following the arrest of numerous individuals, the upcoming months of year 2016 anticipate landmark decisions on few ongoing cases.

Despite the call by various NGOs, local and international, for the abolishment of the Sedition Act which is perceived as a relic from the pre-Independence days, the courts seem reluctant to give a narrow interpretation and hence the application of the *soi-disant* obsolete Sedition Act. *Au contraire*, following the Federal Court’s decision in Azmi Shahrom’s case which had set a *stare decisis* that the Sedition Act does not contravene Article 10 (2) of the Federal Constitution, it will be an uphill battle for the lawyers to convince the courts otherwise.

Whilst the courts are stringent in their approach re the Sedition Act, the judicial environment seems to exude healthier breadth in dealing with the PPPA with the landmark case of Sepakat and subsequently The Edge’s case. However, the High Court in the latest BERSIH’s case has departed from the earlier judicial sentiment and are reluctant to interfere with the administrative decision of the Home Minister. Consequently, the outcome of the appeal of this case would be the determining factor in setting the legal dimension in upholding freedom of expression in Malaysia as far as the PPPA is concerned.

Below is the summary of a few ongoing cases:

- **PP v. ZULKIFLEE ANWAR HAQUE (ONGOING CASE)**

Keywords - Political Cartoonist – Sedition Act

Background - The accused, a political cartoonist more popularly known with his pen name, Zunar, was charged on 9 counts under Section 4(1) of the Sedition Act, 1948 in relation to a series of tweets and a cartoon he published in February 2015 concerning the sodomy conviction against Malaysian opposition leader, Datuk Seri Anwar Ibrahim. Zunar is currently facing 43 years in prison if found guilty of the 9 counts of sedition offences. One of the tweets reads *“The lackeys in black robes are proud of their sentence. The rewards from the political masters must be plenty,”*

Court Proceedings – The accused has through his lawyers filed applications to have the case referred to the high court, mounting a constitutional challenge to the Sedition Act. The case is currently fixed for further mention on 7th April 2016 pending the decision of another case (N.Surendran) reference to the High Court on the following questions:

1. Whether the Sedition Act 1948 is constitutional;
 2. Whether the Sedition Act 1948 contravenes Articles 5, 8 and 10 of the Federal Constitution;
 3. Whether the Sedition Act 1948 is unconstitutional considering that intention need not be proven for offences under the said Act.
- Surendran’s case is fixed for decision on 14th April 2016.

- **PP v. ERIC PAULSEN (ONGOING CASE)**

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Keywords – Lawyer – Sedition Act

Background – On 12th of January 2015, Eric Paulsen, a lawyer was arrested at Brickfields in Kuala Lumpur. The police also raided LFL office and seized Paulsen’s computer and phone. On 5th of February 2015, Paulsen was charged under Section 4(1)(c) of the Sedition Act for publishing a tweet in which he allegedly accused the Malaysian Islamic Development Department (JAKIM) of promoting extremism. The exact words are *“Jakim is promoting extremism every Friday. Government needs to address that if serious about extremism in Malaysia”*.

Court Proceedings: Likewise, Eric’s case was deferred pending the decision of Surendran’s case. Please refer to Zunar’s case above.

Further Arrests: Paulsen was subsequently arrested on two further occasions on 22nd of March and 16th of June respectively over this tweeter comments.

- **PP v. BILQIS HIJJAS (ONGOING CASE)**

Keywords – Artist –Minor Offences Act 1955.

Background – Bilqis had dropped seven yellow balloons printed with the words “Free Media”, “Democracy”, and “Justice” respectively from the upper floor during an event attended by both the Prime Minister and his wife at Pavillion

Shopping Mall on August 31st, a day after the Bersih 4.0 Rally. She was immediately arrested and subsequently charged under Section 14 of the Minor Offences Act 1955³ for “insulting behavior” with intent to provoke breach of peace at the Kuala Lumpur Magistrate Court which carries a maximum fine of RM100 upon conviction as penalty. Various organizations including the Malaysian Bar has urged the Attorney General Chambers to drop the charge against Bilqis but to no avail.

Development – The trial at the prosecution case will continue at the Kuala Lumpur Magistrate Court on 18th, 19th and 20th April 2016.

LEGISLATION ASPECT

A TIGHTER NOOSE? The existence of the Sedition Act itself loomed on the horizon of freedom of expression like a dark cloud, stifling the development of free media with its invisible barbed wire. In the past two years since the last general election in year 2013, the Act, which was enacted prior to the independence of Malaya in 1957 and is deemed as a relic of the British colonial rule, has been widely used. In 2015 alone, it was reported that at least 91 individuals were arrested, charged or investigated for sedition – almost five times as many as during the law’s first 50 years of existence.

Various international organizations including Article 19, PEN, have unequivocally urged the Malaysian government to end the ongoing crackdown which is perceived as political maneuver to mute opposing voices. The absence of the requirement of “*mens rea*” as stated in Section 3(3) of the Act, which is currently one of the issue challenged in Surendran’s case, render all offences under the Act strict liability.

In defiance of the call for the abolishment of the Sedition Act 1948 and contrary to the pledge of the Prime Minister back in year 2012 that the Sedition Act 1948 would be repealed, the Parliament of Malaysia has passed Sedition (Amendment) Act 2015 (Act A1485) to widen and extend the claws of the Sedition Act. The Amendment Act has been gazetted but yet to come into force. The amendments passed will have the following effect:-

- the widening of the ambit of the definition of “seditious tendency”;
- the increment of imprisonment from “a term not exceeding three years” to “imprisonment for a term not less than three years but not exceeding seven years”;
- restriction on movement – the introduction of the new Section 5A allows the court to order the accused to surrender his travel documents when one

³ Please refer to Appendix 3 for extract of the relevant section.

is charged with an offence under Section 4 of the Act and released on bail;

- The removal of court powers to grant a probationary order (section 173A of the Criminal Procedure Code 1999 (CPC)), grant special order in relation to youthful offenders (section 293 of the CPC); and make order in relation to first offenders (section 294 of the CPC) with the introduction of the new Section 6A of the Sedition Act which remove the relevant and application of such aforementioned sections in the CPC;
- The introduction of Section 10A which gives special power to MCMC's officer to prevent access to publication by electronic means in the event the maker could not be identified.

The amendments to the Sedition Act are unquestionably tight slaps on the face of freedom of expression. It is no doubt a poignant regret for all advocates for freedom of expression that not only such Draconian law is allowed to prowl amongst Malaysians but also it has now been expanded further.

THE FOURTH ESTATE

THE CRACKDOWN: Just when the media was applauding the judicial sentiment in Sepakat's case and The Edge's case leaning in favour of the fourth estate in upholding of the constitutional right of freedom of expression, the state of free press in Malaysia went down a few notches.

- **Blocked Access to TMI portal** – On 25th February 2016, which coincided with the 8th anniversary of TMI, their operating website, “www.themalaysianinsider.com” was blocked by Malaysian Communications and Multimedia Commission (MCMC) (online regulatory body in Malaysia) *without* any forewarning. In a brief statement issued by MCMC, it was stated that TMI portal could be in breach of Section 233 of the Communications and Multimedia Act 1998⁴. The block on TMI was made after the news portal published an article where several statements were contradictory to an official statement issued by Malaysian Anti-Corruption Commission (MACC)'s Operations Review Panel. Communications and Multimedia minister Datuk Seri Dr Salleh Said Keruak said the offending article was entitled "Enough proof to charge Najib over SRC, says MACC oversight committee". The Minister in charge subsequently said that blocking TMI was as necessary as blocking porn sites to safeguard the wellbeing of the nation.
- **Power of MCMC?** – It is interesting to note that there is no provision in the Communications and Multimedia Act 1998 which empowers MCMC

⁴ Please refer to Appendix 3 for extract of the relevant section.

to unilaterally and arbitrarily block the access to a website without going through the prosecution procedure as provided in Chapter 3 of the said Act. Internal guidelines that were sighted appears to suggest that the MCMC can pressure Internet Service Providers (ISPs) to block access. Most ISPs owe their licenses to the MCMC and the government and very rarely they question any direction to block access. Even if TMI did indeed commit an offence under the said Section 233, TMI should first be charged in court. To block the access to the website prior to the initiation of any investigation, let alone prosecution, tantamount to usurpation of the power of adjudication which rest with the judiciary, and not an executive body.

- **Cessation of TMI** - It is interesting to note that The Malaysian Insider (TMI) has ceased operation on March 14th, 2016, 8 years after its inception on 25th February 2008. The Edge Media Group (TEMG) group chief executive officer Ho Kay Tat said the group was forced to cease operation as it did not receive enough commercial support to keep it going. Mr. Ho said in a statement *"There was also an offer for a management buy-out (MBO). Unfortunately, we were unable to reach an agreement with any of the external parties as well as for the MBO to take place. We believe the recent problems TMI had with The Malaysian Communications and Multimedia Commission (MCMC) had made it more difficult for a sale to be concluded even though discussions had started before that."* (note: TMI is owned by The Edge Media Group).

The Edge and TMI have faced onslaught from the authorities since 2015. From the suspension of two of The Edge's publications in July 2015 under the PPPA to the arrest of Mr. Ho Kay Tat, publisher and CEO of The Edge Media (media group), Mr. Jahabar Sadiq, the CEO of TMI as well as TMI's editors for investigation under the Sedition Act, it seems that the block on TMI in February 2016 has served as the *coup de grace* to its demise in the alternative news publishing stage.

In a healthy democracy, a free press acts as a check and balance on the ruling government and functions as the mouthpiece of the people – the voice of democracy. TMI's presence provides an alternative platform for news that is otherwise carried only through mainstream media, where many of them are politically affiliated.

Curtailing access to TMI, and the earlier blocked access to The Medium and the Sarawak Report (all reporting on the 1MDB chronicles) through administrative measures are certainly incongruous with the flourishing of freedom of expression in Malaysia. In 2014, Malaysia was ranked 147th in the Worldwide Press Freedom Index by Reporters Without Borders, faring worse than Myanmar and Zimbabwe. With this latest saga of the blocking of TMI, it is ineluctable that the ranking will take a further dip in the chart.

The blocking of TMI was widely condemned by media groups and human rights activists locally and internationally such as Centre for Independent

Journalism (CIJ), Empower, the Institute of Journalists of Malaysia (IOJ), Geramm, Centre for A Better Tomorrow, etc. John Kirby, the State Department Spokesperson from the U.S. Department of State issued a statement on 2nd of March voicing concern and stating that *“We are further troubled that the Government has not acted transparently nor provided due process to the targeted media organizations and platforms prior to blocking access, and that the Government of Malaysia has initiated criminal investigations against reporters, editors, and publishers from a variety of Malaysian and international media organizations. Of equal concern, many Malaysian social media users face charges for postings critical of the Government and national leaders. Malaysian officials have also publicly described coming amendments to its Communications and Multimedia Act (CMA) that would further restrict online space.”*

In reply and rebuttal to this, the Ministry of Foreign Affairs said on 3rd March that the move to block access to TMI was done after “careful and due consideration” on the impact of the ban on the freedom of speech and freedom of press in Malaysia.

Earlier on New York Times, a Malaysian government spokesperson was reported saying *“The reality in Malaysia is that there is freedom of expression without fear of prosecution. Online and in print, the media is freer than it has ever been.”* What spurs on such illusion remains a myth.

FURTHER ARREST: To make matters worse, two journalists from Australian Broadcasting Corporation (ABC) television reporter Linton Besser and cameraman Louie Eroglu were arrested and detained on March 12th after they attempted to question Prime Minister Najib Razak as he entered a mosque. They were initially charged with obstructing a public servant from discharging his duties. The Sarawak police claimed that the pair were arrested after they *“crossed the security line and aggressively tried to approach”* Najib. They were subsequently released and no charge was brought against them. Australian Foreign Minister Julie Bishop expressed her concern that there is *“a crackdown on freedom of speech”*

Phil Robertson, Deputy Director of the Asia Division for Human Rights Watch, said the arrests were a *“kneejerk reaction ... To arrest them demonstrates the incredible lengths that the authorities are prepared to go to protect Prime Minister Najib from any sort of hard questions about his actions.”* He went to say *“With the recent shutdown of The Malaysian Insider and these arrests, freedom of the press has become increasingly endangered in Najib’s Malaysia.”*

THE FUTURE

MORE LEGISLATIVE SHACKLES? Proposal to amend the Communications and Multimedia Act 1998 (CMA) was initially expected to be tabled in the Parliamentary session, which has begun on 7th March. Speaking to the press earlier February this year, the Communications and Multimedia Minister Datuk Seri Mohd Salleh Said Keruak had mentioned that *“The new law will highlight more specific actions the ministry can take against offenders who commit cybercrimes. For now, we have limited power to take strict action for several cases.... Blocking websites and blogs that spread slanderous statements on the government alone is not enough. We also want the person behind it to receive appropriate punishment.”* He went on to say that the ministry will monitor and block websites and blogs that post defamatory information on the government, including Sarawak Report. He was reported saying *“Even if we block Sarawak Report, they will still use other mediums to instill hatred towards the institutions of government. We have also decided to block those related mediums as it spreads baseless statement,”*. He also told the reporters that the government has recently formed a special committee to tackle the abuse of social media in the country, comprising representatives of the AGC and the police.

Nevertheless, in the thick of international brickbats and local outrage, the said Minister had on March 9th informed the press that the tabling of the amendments to CMA will be delayed so that all stakeholders can be properly consulted for the amendments to CMA.

The impending amendments to CMA which will bring about even more sanctions to regulate the use of social media and bestow more power in the hands of the government pose an alarming threat to the development of freedom of expression. The statements made by the Minister of the Communications and Multimedia affirmed that the government is indeed playing a “Big Brother” role in propagating self-censorship with various iron fist legislation and execution, which in turn, act as invisible muzzles on the mouthpiece.

The future of freedom of expression in Malaysia looks bleak and challenging.

CONCLUSION: The TMI episode has shown us how the Fourth Estate could be led to its own downfall by subjecting the media to the rigmarole of arrest, questioning, prosecution, and the ultimate administrative block. The judiciary plays an utmost important role in the upcoming cases in deciding not only the fate of the accused/plaintiffs concerned, but also the direction of which freedom of expression is heading. Even with a judicial

trend favouring the upholding of freedom of expression, it is not sufficient to steer the ship back to the right direction if the government continues to exercise its administrative power arbitrarily. In short, what stifle the development of freedom of expression is not so much the prosecution, but the persecution of those who dare to speak up.

Appendix 1

SEDITION ACT 1948

- **Section 2 of the Sedition Act 1948 defines “seditious” as “any act, speech, words, publication or other thing qualifies the act, speech, words, publication or other thing as one having a seditious tendency;”**
- **Section 3(1) of the Sedition Act 1948 carves the ambit of “seditious tendency” as follows:**
 - (1) A “seditious tendency” is a tendency -
 - (a) to bring into hatred or contempt or to excite disaffection against any Ruler or against any Government;
 - (b) to excite the subjects of any Ruler or the inhabitants of any territory governed by any Government to attempt to procure in the territory of the Ruler or governed by the Government, the alteration, otherwise than by lawful means, of any matter as by law established;
 - (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Malaysia or in any State;
 - (d) to raise discontent or disaffection amongst the subjects of the Yang di-Pertuan Agong or of the Ruler of any State or amongst the inhabitants of Malaysia or of any State;
 - (e) to promote feelings of ill-will and hostility between different races or classes of the population of Malaysia; or
 - (f) to question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III of the Federal Constitution or Article 152, 153 or 181 of the Federal Constitution.
- **Section 4(1) of the Sedition Act 1948 provides for a wide range of offences in which a “seditious” act may trigger criminal liability.**

“Any person who -

- (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency;
- (b) utters any seditious words;
- (c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or
- (d) imports any seditious publication,

shall be guilty of an offence and shall, on conviction, be liable for a first offence to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or to both, and, for a subsequent offence, to imprisonment for a term not exceeding five years; and any seditious publication found in the possession of the person or used in evidence at his trial shall be forfeited and may be destroyed or otherwise disposed of as the court directs.”

- **Section 4(2) of the Sedition Act 1948 makes possession of “seditious” material a criminal offence.**

“Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and shall, on conviction, be liable for a first offence to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding eighteen months or to both, and, for a subsequent offence, to imprisonment for a term not exceeding three years, and the publication shall be forfeited and may be destroyed or otherwise disposed of as the court directs.”

- **Section 9(1) of the Sedition Act 1948 empowers the Court to suspend newspaper that are found publishing seditious materials.**

“Whenever any person is convicted of publishing in any newspaper any matter having a seditious tendency, the court may, if it thinks fit, either in lieu of or in addition to any other punishment, make orders as to all or any of the following matters:

- (a) prohibiting, either absolutely or except on conditions to be specified in the order, for any period not exceeding one year from the date of the order, the future publication of that newspaper;*
- (b) prohibiting, either absolutely or except on conditions to be specified in the order, for the period aforesaid, the publisher, proprietor, or editor of that newspaper or from publishing, editing or writing for any newspaper, or from assisting, whether with money or money’s worth, material, personal service, or otherwise in the publication, editing, or production of any newspaper; and*
- (c) that for the period aforesaid any printing press used in the production of the newspaper be used only on conditions to be specified in the order, or that it be seized by the police and detained by them for the period aforesaid.*

Appendix 2

- **Section 7 (1) of the Printing Presses And Publications Act 1984 empowers the Minister to impose restrictions/conditions on a publisher if any publication fall within the ambit provided in Section 7(1) of the Act.**

“(1) If the Minister is satisfied that any publication contains any article, caricature, photograph, report, notes, writing, sound, music, statement or any other thing which is in any manner prejudicial to or likely to be prejudicial to public order, morality, security, or which is likely to alarm public opinion, or which is or is likely to be contrary to any law or is otherwise prejudicial to or is likely to be prejudicial to public interest or national interest, he may in his absolute discretion by order published in the Gazette prohibit, either absolutely or subject to such conditions as may be prescribed, the printing, importation, production, reproduction, publishing, sale, issue, circulation, distribution or possession of that publication and future publications of the publisher concerned.

Appendix 3

• **Section 233 of the Communications and Multimedia Act 1998 provides:**

“(1) A person who-

- (a) by means of any network facilities or network service or applications service knowingly-*
 - (ii) initiates the transmission of any comment, request, suggestion or other communication which is obscene, indecent, false, menacing or offensive in character with intent to annoy, abuse, threaten or harass another person; or*

- (b) initiates a communication using any applications service, whether continuously, repeatedly or otherwise, during which communication may or may not ensue, with or without disclosing his identity and with intent to annoy, abuse, threaten or harass any person at any number or electronic address,*

commits an offence.

(2) A person who knowingly-

- (a) by means of a network service or applications service provides any obscene communication for commercial purposes to any person; or*
- (b) permits a network service or applications service under the person's control to be used for an activity described in paragraph (a), commits an offence.*

(3) A person who commits an offence under this section shall, on conviction, be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding one year or to both and shall also be liable to a further fine of one thousand ringgit for every day during which the offence is continued after conviction.”

• **Section 14 of the Minor Offences Act 1955 provides:**

“Any person who uses any indecent, threatening, abusive or insulting words, or behaves in a threatening or insulting manner, or posts up or affixes or exhibits any indecent, threatening, abusive or insulting written paper or drawing with intent to provoke a breach of the peace, or whereby a breach of the peace is likely to be occasioned, shall be liable to a fine not exceeding one hundred ringgit.”