

Freedom of speech from the perspective of mass media assignment

[Art & Culture](#)



Second, they serve an agenda-setting and interpretation function. Third, they help us to create and maintain connections with various groups in society. Fourth, they help us to socialize and to educate us. Fifth, they persuade us to buy certain items or accept certain ideas. Sixth, they entertain us. Freedom is the power or right to act, speak or think freely. We are now living a media culture and its Influence is become very pervasive. The number of hours we spend on the media is mind- boggling. Although the freedom of the media should not be in Toto, yet the agree of the freedom of the media will affect the function of the media.

Citizens of countries that are democratic see media freedom as a right, not a privilege. Nevertheless, there is no mention of freedom of the press or freedom of the electronic media in our Constitution. However, freedom of media to exercise its role and functions in society has been enshrined as a fundamental human right by way of recognition for the right to freedom of speech, expression and opinion. ³ Pre-independence In 1930-1940, there are nearly 80 newspaper and magazines published in the Malay State, such as Tutu's Namely, Sadder, Wart Malay and Misaims.

In Wart Malay, it published article that talk about the social and economic problems faced by the Malay. However, it did not ask for the British to be chased out. The newspaper, Misaims, discussed the political issues. Misaims not only brings to the awakening and fights for Malay right, their office became the place for the nationalist to meet up and exchange their thoughts. In the newspapers Sadder, there was a column named ' Persuading Sabbath Penn' where the Malay readers exchanged their point of

view. British was worried on the development of this column and therefore took the step o overseen those who involved in the said column.

In view of the number of publications that existed during the time and the situation whereby those newspapers are free to discussed any issues, and the fact that the newspapers has played a vital role in the movement towards independence, we can conclude that under the administration of British, the media was enjoying the freedom of speech. The law on the freedom of speech became clearer during the time prior to independence. Certain law has been introduced to the Malay State. One of the laws which governed the freedom of speech at that time was the Sedition Act 1948.

Section 4 of the Act makes it an offence to make, prepare, or to conspire, to do a sedition act, to utter seditious words, and to propagate or import any seditious publications. Section 3 provides that a seditious tendency is one which tends to (a) bring hatred or contempt to the government or excite disaffection against any Ruler or government, (b) excite the countrymen to revolt, (c) bring into hatred or contempt or excites disaffection against administration of justice, (d) raise discontent or disaffection among the countrymen, or (e) promote feelings of ill-will and stylist amongst the inhabitants of the country.

Besides, there were two ordinances specifically deal with the printed media at that time, I. E. Printing Press Act 1 948 (Rod 12 of 1 948) and Control of Imported Publications Act 1958 (Rod 14 of 1955). The former deal with the publisher in the Malay State while the later governing the printed material from other country. Those laws were limiting freedom of speech of the media

<https://assignbuster.com/freedom-of-speech-from-the-perspective-of-mass-media-assignment/>

at the British colonial the light of the freedom of speech only shine at the colonial since 1956, when an attempt to draft a Federal Constitution started.

The commendations were submitted by Reid Commission in 1956-1957 Reports. In the report, there were two paragraphs provides under the title ' Fundamental Rights' 1 61 . A Federal Constitution defines and guarantees the right of the Federation and the states; it is usual and in our opinion right that it should also define and guarantee certain fundamental individual right which are generally regarded as essential conditions for a free and democratic way of life.

The rights which are recommend should be defined and guaranteed are all firmly established now throughout Malaysia and it ay seen unnecessary to give them special protection in the Constitution. But we found in certain quarters vague apprehension about the future. We believe such apprehensions to be unbound, but there can be no objection to guaranteeing these rights subject to limited exceptions in conditions of emergency and we recommend that this should be done..... 162. Our recommendations afford means of redress, readily available to any individual, against unlawful infringements of personal liberty in any of its aspects... E further recommend (Art 10) that freedom of speech and expression should e guaranteed to all citizens subject to restrictions in the interest of security, public order or morality or in relation to incitement, defamation or contempt of court... For the Malaysian citizen, the objectives of those who framed the Federal Constitution were but little affected by the epidemic of human rights in the Western world. It has been observed that the commission's recommendation

on the freedom of speech has been vague, particularly on the importance of the rights.

The commission only devoted two paragraphs. The reason why it was so was clear in the paragraph itself. The draft Article 10 in our Constitution was as follow: ID (1) every citizen shall have the right to freedom of speech and expression, subject to any reasonable restriction imposed by federal law in the interest of the security of the Federation, friendly relations with other countries, public order, or morality, or in relation to contempt of court, defamation, or incitement to any offence.

Mr.. Justice Abdul Humid on his note of dissent stated that ' the word ' reasonable' wherever it occurs before the word ' restrictions' in the three sub-clauses of Article 10 should be omitted. Right to redeem of speech, assembly, and association has been guaranteed subject to restrictions which may be imposed in the interest of security of the country, public order and morality.

If the Legislature imposes any restrictions in the interest of the aforesaid matters, considering those restrictions to be reasonable, that legislation should not be challenged in a court of law on the ground that the restrictions are not reasonable. The Legislature alone should be the judge of what is reasonable under the circumstances. If the word ' reasonable' is allowed to stand, every legislation on this subject will be halogenated in court on the ground that the restrictions imposed by the legislature are not reasonable.

This will in many cases give rise to conflict between the views of Legislature and the views of the court on the reasonableness of the restrictions. To avoid a situation like that it is better to make the Legislature the judge of the reasonableness of the restrictions. If this is not done the legislatures of the country will not be sure of the state of the law which they will enact. There will always be fear that the court may hold the restrictions imposed by it to be unreasonable. The laws would be jacking in certainty. Later, when the Constitution comes into force, the Article 10 provides that: (1) subject to clause (2): (a) Every citizen has the right to freedom of speech and expression; (2) Parliament may by law impose: - (a) on the rights conferred by paragraph (a) of clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or of any legislative Assembly or to provide against contempt of courts, defamation, or incitement to any offence; There are one case regarding to press reported prior to independence I. E.

Public Prosecutor v. The Straits Times Press Ltd In this case, upon the application of the Public Prosecutor, the Respondents, who are the proprietors of the Straits Times Press Ltd, were alleged contempt in publishing a report of the trial of Tan Seen Ann of the Straits Times dated 5 August 1948. The report appeared which, it is now admitted, was misleading and inaccurate in that it gave the impression, contrary to the facts, that the first step in the proceedings in that case was a voluntary confession by Tan

Seen Ann that he was in possession of a fire-arm and that his arrest was made solely as the result of such voluntary confession in the issue.

The Notice of Motion having set out the terms of the letter complained of went on to allege inter alia that the criminal case referred to in the letter was sub Judice when the letter was published in that an appeal was pending; that the terms of the letter did not constitute a fair or accurate account of the trial nor fair comment thereon; and that its publication tended to prejudice the fair disposal of the proceedings and tended to bring into contempt the administration of justice by that Court. Spencer-Wilkinson J held that: I would hesitate to follow too closely the decisions of English Courts on this subject without first considering whether the relevant conditions in England and this country are at all similar.

Quite apart from the present emergency in this country, do not think it could be suggested that the development of the Press, the general standard of education or the composition of the general public in the two countries are at all comparable and it may, therefore, be necessary to take a stricter view here of matters which pertain to the dignity of the Courts and the impartial administration of justice than would be taken at the present time in England.

" Newly Independence (1957-1980) At this period, Art 10 Federal

Constitution has been amended twice. The first amendment was on 1 9636 where the words ' Clause (2) and (3)' had been substituted for the words ' clause (2)' of clause (1) with effect from 16 September 1 963. ND the words ' or any part thereof were added to the Art Further, clause (3) which provides that: " Restrictions on the right to form a associations conferred by

paragraph (c) of clause (1) may also be imposed by any law relating to labor or education. " The second amendment was made on 1971 after considering the trouble of May 1969. This time, Clause (4) was added with effect from 10 March 1971. Article 10(4) provides that Parliament may pass laws prohibiting the questioning of four sensitive matters: right to citizenship under Part III of the Constitution; status of the Malay language; position and privileges of the Malay and the native of Sabah and Sarawak; and prerogatives of the Malay Sultans and the Ruling Chiefs of Negeri Sembilan. The constitutional changes enable Parliament to amend the

Sedition Act of 1948 in order to add a new definition of ' seditious tendency. The amended sections were: Section 3 (1) A seditious tendency is a tendency (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 2 " seditious" when applied to or used in respect of any act, speech, words, publication or other thing qualifies the act, speech, words, publication or other thing as one having a seditious tendency; Official Secrets Act 1972 is a new law that be introduced at that time.

This is the most important statute on government secrecy. The gist of the law is that ' official secrets' cannot be received, retained, released or used without prior authorization-9 The Act is drafted in the widest possible terms and is not limited in its operation to spies, saboteurs, traitors and mercenaries. The term ' official secret' is not defined in the Act. The courts have given the term the broadest possible definition, and on the generally

accepted construction any communication pertaining to the Executive would constitute an offence. 1 0 The right to free speech can be further eclipsed by the special provisions of Art 149 and 1 50 relating to subversion and emergency.

Art 149 authorities legislative action designed to stop or prevent subversion, organized violence and crimes prejudicial to the public. Art 150 permits any legislative action required by reason of emergency. The grounds enumerated above permitting curtailment of free speech are so broad and comprehensive that in 49 years no Act of parliament even been found by the courts to have violated the Constitution. Besides printed media, television was introduced in Malaysia in 1963. The elevation was under the control of the Department of Broadcasting (RTFM). What is apparent is that television and more generally broadcasting in Malaysia was from its inception closely aligned to the government.

Both the RTFM channel were established via decisions made by the then Alliance coalition government. Because of the circumstances at that time, there was no any specifics rule to govern the broadcasting. One of the cases that being heard at that time was Melanin bin Abdullah v Public Prosecutor. 1 1 The fact of the case was that On 6 April 1 971 the Tutu's Malay newspaper published a port of a talk given by given by Inches MUSM HITA, a prominent Malay leader and member of Parliament, at the National Education Congress held in the Dean Bases Dan Pasta, Koala Lump.. In the report was an editorial sub-heading which in the English translation reads: " Abolish Tamil or Chinese medium schools in this country. The first appellant was the editor-

in-chief of the Tutu's Namely, and the second appellant the author of the sub-heading inserted in the report. Sanction for their prosecution was given under s 5(1) of the Sedition Act 1948, and they were tried in due course in the special sessions court on a charge of publishing a seditious publication in contravention of s of the Sedition Act, punishable under the same section. The learned special president held the publication to be seditious, that the first appellant " was responsible for all publication in the Jujitsu Namely", that the second appellant was the author of the impugned subheading, and that consequently they were both guilty.

They were convicted and fined the sum of \$500 and S 1 , OHO respectively, in default one month and two months' imprisonment, both appellant appealed. CO Eng, on hearing of the appeal accepted the first appellant evidence that he had regained seminars and discussions, relating In particular to the " sensitive issues" and had instructed his staff on the relevant law as he understood it. He had sponsored a talk to journalists given on this subject in February 1971 by the Attorney General as well as the Solicitor-General. Therefore, the first respondent appeal was allowed. But the court dismissed the second respondent appeal. Another case is Public Prosecutor v Straits Times (Malay) Bad. 2 The Public prosecutor applied in this case for leave to issue a writ or writs of attachment for contempt of court on the respondents for publication f articles in The Straits Times. The grounds upon which relief was sought was that " the publications of the said articles contain matters which are tendentious and constitute contempt of court, because they are prejudicing and embarrassing the applicant in the exercise of his statutory functions and also prejudicing a fair trial concerning

the circumstances of the death of one Robert Lee. " Abdul Humid J held that: ' I do not think that it is reasonable to construe these words as having any special meaning.

There is no dispute that the reports do reveal that there had been an assault, a commotion and firing of a hot and that allegedly, a police officer was involved. But these facts are not challenged. As regards the previous episode encountered by Robert Lee there is nothing to show that this was not true. Further it is not uncommon for newspapers to publish matters concerning scholastic achievement of and other good deeds rendered by a person on his death particularly if the dead person enjoys a certain standing in the community or he is in one way or another related to any prominent personality. For that reason it is unreasonable to isolate certain passages from the reports and construe them unfavorable or to impute improper motive on the publisher.

What may appear to be an embarrassment or prejudicial if that part is read in isolation may not be so if the reports are read as a whole taking into account the circumstances surrounding such publication particularly if it relates to a matter which will promote public sensation or a matter of unusual occurrence. " The application was therefore dismissed. Malaysia under Tuna Dry. Mathis (1981-2002) Over this period, more laws are introduced and come into force to govern the media. In 1984, Printing Presses and Publications Act came into force on the 1st of September 1984 as a consolidating Act, and in turn repealed the Printing Presses Act 1948 and the Control of Imported Publications Act 1958. The Act is designed ' to

regulate the use of printing, presses and the printing, importation, production, reproduction, publishing and distribution of publications and for matters connected there with'.

Through such control, the government uses its power to determine what it is the public has a right to know, or exactly what form freedom of speech should take. This is an Act designed clearly to ensure that the press does not get out of line, imposes a system of licensing and censorship. Section 3 of the Act makes it mandatory to obtain a license to own a printing press. The Minister has absolute discretion on giving, refusing, and revoking a license. Further, judicial review of the Minister's discretion is not allowed and the Minister is not required to give the parties a prior hearing. The period of the license is 12 months or shorter period as the minister specifies.

This means that all publishers in this country must suffer the pangs of uncertainty about whether their permit will be renewed for the following year. There is less control of what may be written in foreign publications, controls have been exercised through deliberate delay in distribution and sometimes outright ban on their sale where officials deemed reports to be offensive or inaccurate. In 1988, another law governing the media came into force on 1st August I. E. The Broadcasting Act 1988. The preamble to the Act states: ' An act to provide for the control of broadcasting services and for matters connected therewith'. The Act is both stringent and inflexible. It bestows enormous powers on the government to determine the type of television made available to the Malaysian public.

In the midst of the supposed 'deregulation' of broadcasting the Act now gives the Minister of Information virtually total powers to determine who will and who will not broadcast and the nature of the broadcast material. Under the Act, any potential broadcaster would need to apply for a license from the minister beforehand. Later, the Act was amended on October 1996. By the amendment, this already-stringent piece of legislation were aimed at taking into account the introduction of new services, such as cable and satellite television, satellite radio, pay TV and video-on demand. Due to the drastic development in the electronic media, the Legislature has to repeal the old Telecommunication Act 1950 and the Broadcasting Act 1988 and introduced a new law which is the Communications and Multimedia Act 1998.

The Act's breakthrough was to bring together the previously disparate industries of broadcasting, telecommunications and internet services combined under legislation and more importantly, one regulator the Communications and Multimedia commission. 20 The Communication and Multimedia Act brings to the creation of Communication and Multimedia Commission Act 1998. The Communication ND Multimedia Commission performing several functions including advising the Minister all matters concerning the national policy objectives for communication and multimedia activities and implementing and enforcing the provisions of the communications and multimedia law. Interestingly, Information Malaysia 1980-81 and Information Malaysia 1985 revealed that between 1981 and 1985 alone, the number of titles of local newspapers, magazines, and journals in circulation increased from 56 to 10221.

However, the increase in number cannot be the proof supporting the allegation that during that time, the media was enjoying freedom of speech. There are some facts that we should not forget. In 1987, during the Operasi Lang, a number of newspapers were closed by the government. Later, Hark being categorized as publications of political parties meant for party members and there is law forbids the publication being openly sold to the public. Besides, Barista National owned and controlled major Malaysian media organization. Further, prior to Data Series Amass sacking, expulsion, and detention, the editor of Tutu's Malaysia and Barite Harlan, and the director of operations of TVA were forced to resign because they were allied to Near.

In 1990, there was a case of Liar Skateboards. In this case, the respondents had applied for a permit under s 6(1) of the Printing Presses and Publications Act 1984 to print and publish in Bases Malaysia a magazine under the name and style of Assure Liar. The application was refused by the Minister of Home Affairs. The respondents applied for an order of certiorari to remove into the High Court for the purpose of quashing the decision of the Minister and for an order of mandamus directing the Minister to hear and determine the application for the permit according to law. The High Court made an order quashing the decision of the Minister and ordered that the Minister shall hear and determine according to law the application for the permit. The appellant appealed.

The court allowing the appeal and held that; ' Section 12(2) of the Printing Presses and Publications Act 1984 gives the Minister of Home Affairs '

absolute discretion to refuse an application for a license or permit'. So unless it can be clearly established that the Minister for Home Affairs had in any way exercised his discretion wrongfully, unfairly, dishonestly or in bad faith, the High Court cannot question the discretion of the Minister. One of the significant cases during this period was the case of Irene Fernando. The facts were that in 1995, Tenaning released a report documenting beatings, sexual violence against detainees by prison guards, and inadequate food and water in Malaysia's immigration detention camp. Irene Fernando was arrested and charged with malicious publication of false news under the Printing Presses and Publications Act.

Magistrate Juliann Mohamed found Irene guilty and was sentence to one year imprison. Current Situation (2003-2006) Between these periods of time, there is no any new law designed to control he media. However, recently, Government has released the Media Council Bill (2006) which seeks to ameliorate some of the worst excess of the Printing Presses and Publications Act in regard to the local media. On page 4 of the Bill, it was stated: " An Act to establish the Malaysian Press Council for the purpose of preserving, promoting and protecting the freedom of the Press, of maintaining and improving the ethical and professional journalistic standards of newspapers, press publications and news/press agencies in Malaysia. Nevertheless, there is fear in public that this piece of legislation will create another unnecessary public body with wide powers to curb press freedom despite its apparent duty to uphold that right. It might also act as a censorship board, only dealing with complaints against the press organizations and journalists and not against denial of freedom of expression by other entities such as

ministers or organizations whose actions effectively suppress the right of freedom of expression. Besides, bear in mind that all the laws governing the media before this are still firmly in place and the main stream media also continue to be owned by interests directly or indirectly tied to the main component parties Of the BAN, specially JOIN and MAC.

Some incidents happened during this time of period, showing to us that despite of the changes of the head of the Government, the media are not freer compared to the years before. The government shut down the Karakas tribune for the editors made a mistake of reprinting caricatures of Prophet Muhammad following Muslim protests of a Danish paper that first published them. Another incident was that the Minister of Information, Dates Jaundice had sought the sacking of top NEST editor at a meeting of Kimono's information bureau because he was unhappy with the way the NEST had played up certain issues such as the religious rights of minorities and the government's policy on bumptious. 4 The government also delays in reviewing the publishing permit of the Oriental Daily and censor certain news that the government were not comfortable with. Moreover, the debate on Ninth Malaysia Plan was given wide publicity in the media, but it was the official view and rationale for the Plan that enjoyed one- sided coverage. The leader of the opposition who spoke foe six hours on the Plan did not get any substantive coverage. 25 Another issue was that Tuna Dry. Mathis had called a press conference to express his deep disappointment after Dates Series Abdullah dismissed the ' crooked bridge?? project. However, the mainstream media hardly covered it.

Conclusions The freedom of the media has seen become more restrictive from the time prior to independence until now. At the early day, the British Colonial has a freer media compare to the media after independence. This might be because of the British regarded the individual freedom as up most important. When came to the early day after independence, the laws being designed were more restricted. However, this was understandable as the situation at that time, where Malaysia was in an Emergency. Unmindful speech might cause riot to the nation. Therefore, the government had to take step to prevent this. In 1970-1985, there was more cases on freedom of speech, after the stand of the courts are clear in these issues, there Was lesser cases.

During the time frame from 1981 to 2002, many laws were designed and many existing laws were amended. Tuna Dry. Mathis tried to justify this by saying that: ' the truth is that there is no absolute press freedom anywhere in the world, be it in a liberal democratic country or in countries governed by dictators. ' 26 He further claimed that journalists and foreigners read a few swappers which support the government and immediately concluded that there is no press freedom in Malaysia. This was in conjunction with his view points that: " Malaysian newspapers are free. But this freedom does not mean freedom to criticize the government alone. It also means freedom to support the government. " 27 Further in Tuna Dry.

Mathis speech at the national union of Journalists dinner on 15th June 1990, he stated that: ' According to an old English proverb, power corrupt and absolute power tends to corrupt absolutely. If there are restrictions on press

freedom, especially pertaining to reports on violence, ex and obscenity, then they are imposed because no one should be given absolute power. This is to prevent the possibility of ' absolute corruption'. This constraint no way suggests there is no press freedom in Malaysia. Government leaders in this country have no absolute power. The people can change the government while the courts can reverse government decisions. Therefore, newspapers in Malaysia must accept these restrictions.

This is done in the national interest and not aimed at destroying press freedom". It is true that freedom of the media has to be limited but over limiting will only result to a closed society. Looking at the current situation, many are thinking that the new government would promote media freedom in view of the government transparency policy. However, one should bear in mind that since Dato Seri Abdullah took over the government until today, it was only three years passed. It is unfair to judge him at this moment. Whether or not there is free media under Dato Seri Abdullah, we shall wait and see. Comparing to our nearest neighbor, Singapore, media in Malaysia enjoy more freedom.

Singapore as a police state, the press is embroiled to explain and support the policies of the Singapore government, as an aid to velveten rather than assuming a counter-checking posture. In Cheese Kiosk Chin case, the Singapore court held that: " it bears emphasis that the phrase ' necessary or expedient' confers on Parliament an extremely wide discretionary power and remit that permits a multifarious and multifaceted approach towards achieving any of the purposes specified in Art 14(2) of the constitution. In

contrast to the Indian Constitution, there can be no questioning of whether the Legislations are 'reasonable'. The court's sole task, when a constitutional challenge is advanced, is to ascertain whether an