

# Media Freedom in Malaysia

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**[Abstract:** This article discusses the contemporary issue of media freedom in Malaysia. First, it discusses the concept of freedom of the press and determines which theories, Libertarian, Social Responsibility, or Authoritarian, are suitable in the context of analysing the real situation of media freedom in Malaysia. Second, by using the list of media freedom criteria from the Department of Journalistic Studies, Missouri University, US, analysis has been done to measure the situation of media freedom in Malaysia. Third, the article tries to show the latest movements and lobbies internally and externally in supporting the media freedom in Malaysia. To conclude the current situation, the Malaysian government has restricted media freedom for the purpose of national security and political stability. However, this article clearly shows that media in Malaysia has been controlled by the government and media companies associated with government leaders for political survivability of ruling government party and leaders to hold the power.]

Media is critical in today's society because the mass media performs a number of essential functions in our lives. First, they serve an information or surveillance function. Second, they serve an agenda-setting and interpretation function. Third, they help us create and maintain connections with various groups in society. Fourth, they help us socialise and educate us. Fifth, they persuade us to buy certain items or accept certain ideas. And sixth, they entertain us. The number of hours we spend consuming the media is mind-boggling. This amount is ever increasing. For better or worse, we are inextricably linked to the media. We are now living a media culture and its influence is becoming very pervasive (Mohd Hamdan Adnan 2003).

Considering the media situation in Malaysia, a research done by Bridget Welsh's (1996)<sup>1</sup> could be an indicator to know the real situation of freedom of the press in Malaysia. The findings of the research clearly show that the overall percentage for freedom of speech/press is 29% in Capital (urban) and 39% in Non-Capital (rural). Only 22% of respondents in Capital and 35% in Non-Capital feel that the right to free speech/press should be a priority. The support of freedom of expression by certain Malaysians in urban areas compared to rural areas was due to the increase of awareness of human rights as a

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consequence of the improvement of education level among people and economic growth.

Welsh<sup>2</sup> (1996) has also analysed Malaysians' attitude towards media in Malaysia and provided interesting findings. Accordingly, views of media fell into the semi-democratic range. Eighty-six percent of respondents support press freedom but only 40% is willing to utilise it to voice out sensitive issues such as racial, religious or cultural. Meanwhile, 52% are willing to criticise the government on certain issues. When discussing media control by the government, 69% of the respondents agree to media relationship with the government. However, there is a contradicting view where 51% of urban respondents and 40% of rural respondents perceive that the media is not critical enough towards government administration, while 27% feel that media has played its role with responsibility. In conclusion, based on the findings, Malaysians agree to media control and a close relationship between the government and media through share ownership. The respondents believe that media should prioritise freedom of expression by being more critical towards the government.

There is a latest survey done by Freedom House (2003) entitled "*Freedom of the Press 2003*" to analyse press freedom in all countries including Malaysia. The Freedom House determined that the level of press freedom in each country is divided into three broad categories: the legal environment,<sup>3</sup> political influences,<sup>4</sup> and economic pressures.<sup>5</sup> Malaysia scored 71 points – 26 points for legal environment, 27 points for political influence, and 18 points for economic pressures – and received a status of "Not Free".<sup>6</sup> Limitations on freedom of expression in Malaysia are permitted by the constitution and the media was sharply constrained by legal restrictions and official intimidation in 2002. The Printing Presses and Publications Act (PPPA) requires all publishers and printing firms to obtain an annual permit to operate, which can be withdrawn without judicial review. Some pro-opposition media outlets have been shut down. The Official Secret Act (OSA), Sedition Act (SA), and the Broadcasting Act also impose wide restrictions on freedom of expression.

The Freedom House (2003) also noticed that the businessmen and companies close to the ruling coalition own most major newspapers and political news coverage and editorials strongly support the government line. Government pressure was suspected when more than 40 journalists were laid off or resigned from "The Sun" newspaper after it published a politically sensitive story in December 2001. Authorities have also increased official pressure on "Malaysiakini," an online news daily. Foreign publications are subjected to censorship, and issues containing critical articles are frequently delayed. State-run "Radio Television Malaysia" (RTM) and the two private television stations, TV3 and NTV7, offer flattering coverage of the government and rarely air opposition views. Many journalists practise self-censorship. Journalist Hishamuddin Rais, who was detained under ISA in 2001, had just been released in 2003 after serving 2 years of detention.

Based on these two researches, this article tries to examine the situation of media freedom and to answer the questions on what, how, and why media freedom is so hard to be existent in Malaysia.

### Theories of Freedom of the Press

The fundamental identification of the press or media consists of forms of mass media

i.e. radio, television, magazines, newspapers, and the latest, the Internet.<sup>7</sup> The press undeniably plays a pivotal role in enabling the right of free expression to be exercised, as the press functions as a conduit for disseminating information, which in turn contributes to the development of societies as a whole. Without the press, societies would remain in the darkness of ignorance. Clearly, freedom of the press merely functions in the democratic society, other than that, there is no freedom of the press being practised. Both the free press or media and democracy are complementary. The media helps preserve and promote democracy by safeguarding the independence of its institution including of itself and ensuring their accountability.

According to libertarian theory, various press outlets create a marketplace of ideas. Viewing the press as the marketplace of ideas emphasises privileges of press freedom such as rights of access and publication (Gauthier 1999). However, the libertarian theory of the press is not a universal model. The libertarian view is that the press should be free to publish what it chooses, however irresponsible or biased its actions may seem to be. In this model, the audience is seen as choosing freely in the marketplace of ideas. The "logic" is that where the press is free, the marketplace of ideas sorts out the irresponsible from the responsible and rewards the latter. But this model cannot be applied to all countries (Goonasekera 2000). The free marketplace of ideas in multicultural, multi-party democracies in Asia can result in heightening of racial and religious tensions, mobilising sectional constituencies and arousing emotions (Goonasekera and Ito 1999). A partisan media can flood the marketplace with racially divisive information, confuse the people and set the country in a course of racial strife and civil war. Instead, easy solutions are peddled for complex problems that require hard political decisions including restricting the freedom of the press.

Conversely, the social responsibility theory is based on the Hutchins Commission Report (1947) and developed further by Peterson (Seibert, Peterson, and Schramm, 1956/1973), who summarised it:

Freedom carries concomitant obligations; and the press, which enjoys a privileged position under our government, is obligated to be responsible to society for carrying out certain essential functions of mass communication in contemporary society (Gauthier 1999).

Press control is mostly in the form of community opinion, consumer action, and professional ethics. A specific press responsibility identified in the Hutchins report was "presentation and clarification of goals and values of society." Peterson pointed out that the "right of expression" is not seen as an absolute right in the social responsibility theory. Instead, "one's right to free expression must be balanced against the private rights of others and against vital social interests" (Gauthier 1999). For the outset, the very term social responsibility seems to indicate a sense of morality. Assumptions such as societal order and stability, personal sacrifice for the benefit of others, consistency in the reporting of possibly complicated facts and events, and a stewardship towards humanity all seem to flow from this theory (Lloyd 1991:200). Some proponents of social responsibility even claimed that its application is essential to preserve democracy (Mollenhof 1964). Normally, the social responsibility tasks and the job to protect the society have always been the duty of the government if private companies could not take social interest and responsibility. However, these tasks can be manipulated for the

benefit of the government to curb people's freedom through media ownership. In Malaysia, the scenario of press ownership can be traced back since *Malaysian Independence* in 1957. Malaysia's Former Prime Minister Dr. Mahathir Mohamad in his speech in the 48<sup>th</sup> UN General Assembly in 1993, supported the argument of social responsibility theorists and said:

Malaysia believes in press freedom. But the freedom as other freedom and rights must be with responsibility. We hope for a responsible Malaysian media but we do not ignore the need of supervision of this responsibility. But for international newspaper, we can only hope and pray that they realise what they are doing (Mahathir 1994).

Hence, the press has a responsibility and duty to encourage harmonious relationships between races in Malaysia. Because of the concern of racial antagonism, the government uses of race relationship as a motive to monitor and control the press in Malaysia.

Although Malaysia has likely shown applying the theory of social responsibility in its policies on the press, there is another theory of authoritarianism which is more suitable in analysing the press situation in Malaysia. The authoritarian concept was based on the 16<sup>th</sup> and 17<sup>th</sup> century English history and philosophy of the absolute power of the monarch and the authoritarian system has been most pervasive both historically and geographically (Severin 2001:310). The goal of the media under such a system is to support and advance the policies of the government so that it can achieve its objectives. The major problem in such a system is establishing and exercising effective control over the media, mostly privately owned. Control mechanisms include, but are not limited to, licensing system, government censorship, special taxes, and laws in the name of preserving the nation, such as treason and sedition. According to Siebert (1956:18-26), the authoritarians do not object to a discussion of political systems in broad philosophical terms, but will not allow direct criticism of current political leaders and their projects or overt attempt to unseat the authorities themselves. The press in Malaysia is often regarded as the prototype of authoritarian press in Asia (Luwarso 2000, Jiafei Yin 2003). In Malaysia, the means to control the press are very similar to those used in 16<sup>th</sup> or 17<sup>th</sup> century England, including government censorship, suspension of license, legal actions against the press, and even shutdown of the offending publications. But that is where similarities stop. The authoritarian press theory was based on the history of the 16<sup>th</sup> and 17<sup>th</sup> century England while the press in Malaysia is shaped more by the Malaysian (Asian) cultural tradition and the practical needs of the geo-political realities. The government keeps a watchful eye on the press for any stories that address race relations, religion or problems in foreign countries. Such stories are banned in the Malaysian press because of the mixed racial and religious makeup of its population and its often sensitive relations with its neighbours. Violence and chaos caused by racial and religious differences elsewhere in Asia put the Malaysian government on high alert. Malaysia raises loud voices in promoting "Asian values," which set them far apart from the kind of authoritarianism that originated in 16<sup>th</sup> and 17<sup>th</sup> century England (Jiafei Yin 2003).<sup>8</sup> Ideologically, the elite and their intellectual supporters expressed a preference for systems of government which were underpinned by moral values, social norms, and cultural attitudes which were said to be derived from Asian philosophical traditions and historical experiences. From the perspective of elite seeking to exert domestic control,

“Asian values,” as part of their dominant discourse, was laden with hegemonic intent (Khoo Boo Teik 1999), also offered the attraction of “economic prosperity without social disharmony” (Rodan 1996).

Since independence in 1957, the Malaysian government official control over the media has gradually tightened. The official line is that the country is not ready for greater freedom of expression as it would lead to political instability and inter-ethnic unrest, which would undermine economic development. For those reasons, press freedom in Malaysia has been restricted and controlled by the government.

### Media Freedom in Malaysia

In any democratic country, freedom of expression will not run from discussing media freedom as the best channel for expressing views and exchanging information. Criteria and measure to analyse media right or freedom are based on Table 1 and they could reflect the overall condition of freedom of expression in Malaysia.

**Table 1: Criteria and Measurement of Media Freedom<sup>9</sup>**

No.	Media Freedom Criteria
1	Mass media control through laws that cover allegation, compensation, confidentiality, security and licensing.
2	“Favouritism” in choosing and broadcasting or publishing any public news.
3	Permission to use international/foreign news agency services.
4	Licensing rights of printed publication.
5	Distribution and dissemination of publications.
6	Freedom to criticise issues in relation to government, government agencies, regional agencies, and civil servants.
7	Government or political parties ownership of mass media with prohibition and restriction on media publication of oppositional parties.

Source: Hussain Mohamed 1999:22.

According to criteria 1, 4, and 5 from Table 1 above, the Malaysian legislative system has restricted media freedom through various Acts. Among them are, Internal Security Act (ISA), Official Secret Act (OSA), Sedition Act (SA), Printing Presses and Publications Act (PPPA), Broadcasting Act, Imported Publication Act, BERNAMA Act and, Federal Constitution as justification to limit the freedom of expression.

a. **The Federal Constitution.** Freedom of expression and press is formally assured by Part II of the Federal Constitution under Article 10(1) entitled “Freedom of Speech, Assembly and Association.” Article 10(1) states that a) every citizen has the right to freedom of speech and expression; b) all citizens have the right to assemble peaceably and without arms; and c) all citizens have the right to form associations. However, although citizens have a right to freedom of expression and press, Section 2 of the Article limits that right because 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 or any part thereof, 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 court, defamation, or incitement to any offence; (Federal Constitution, 1999).

Based on the provision above, the Barisan Nasional (BN) government has sought to protect institutions i.e. the Parliament, Courts and federal and states government from loss of credibility and confidence arising from criticism facilitated by the practice of freedom of expression and press. The BN government has tried to avoid any misuse and exploitation of these freedoms by the citizens or foreigners that could embarrass the nation and particularly the government. For instance, the Malaysian government supported the 12 weeks' imprisonment (reduced on appeal to six weeks) of Murray Hiebert, a "*Far Eastern Economic Review*" journalist, on 4 September 1997 for his article entitled "*See You in Court*" which scandalised the court and threatened the credibility of judicial institutions.<sup>10</sup>

Article 10(4) explains the reason for restricting freedom of expression and press:

In imposing restrictions in the interest of the security of the Federation or any part of thereof or public order under Clause (2) (a), Parliament may pass law prohibiting the questioning of any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part II, Article 152, 153 and 182 otherwise in relation to the implementation thereof as may specified in such law. (Federal Constitution 1999:12)

The provision of Article 10(4) was part of the amendment of the Federal Constitution in 1971 and was enforced on 10 March 1971 as a reaction to the racial conflict of 13 May 1969. During five weeks of the 1969 General Election campaign and before the actions of 13 May 1969 disrupted campaigning, the Perikatan party (now BN) faced a stiff challenge from the opposition parties, especially the Democratic Actions Party (DAP) and the Gerakan party (in the 1974 General Election, Gerakan had joined BN and currently still coincides with the BN). The opposition was accused by the Perikatan of using freedom of expression to exploit racial sentiments and dissatisfaction among non-Malays, particularly Chinese and Indians, over the special rights of Malays with respect to particular occupations and higher posts in the public sectors and bringing to an end Chinese hegemony in the business industries (Comber 1983:63). A State of Emergency was declared after the racial clash. The Federal Constitution was also amended to prohibit anyone including members of Parliament during Parliamentary sessions from questioning Part III of the Federal Constitution on Citizenship, Article 152 on National Language, Article 153 on Malay special rights to a quota of public service posts, permits and university enrolments, and Article 181 on saving for Rulers' sovereignty<sup>11</sup> (Rais Yatim 1995:168).

**b. The Internal Security Act 1960.** In 1960, the government made a decision to end the state of emergency caused by communist insurgency, despite the fact that the threat was still extant. As a result, the government took an initiative to create a new law, similar to Emergency Ordinance 1948 in the insurgency period called ISA, with its main objective to eliminate the subversive threat and to extinguish terrorism (Wu Min Aun 1999:268).

There are a few ISA provisions restricting people's freedom in Malaysia mainly in

term of freedom of expression and press. Section 8(1) of the ISA provides:

If the Minister (Home Minister) is satisfied that the detention of any person is necessary with a view to preventing him from acting in any manner prejudicial to the security of Malaysia or any part thereof or to the maintenance of essential services therein or to the economic life thereof, he may make an order (hereinafter referred to as a detention order) directing that person be detained for any period not exceeding two years. (ISA 1998:187)

Clearly this shows that the Home Minister has the power to determine whether an individual should be arrested under ISA because his or her acts may be judged by the police and Home Ministry as a threat to the country or to the government. Section 8(5) further allows for "restriction orders," i.e. imposing restrictions on a person's freedom of movement, freedom of association, and freedom of expression if the Minister is satisfied that such restrictions are necessary for the above-mentioned purposes (SUARAM 2003a)<sup>12</sup>.

In addition Section 22(1) empowers the Minister to ban the printing and circulation of publications that are deemed prejudicial to security and public order. He may do so if he finds that the publication (ISA 1998:198-99)–

- (a) contains any incitement to violence;
- (b) counsels disobedience to the law or any lawful order;
- (c) is calculated or likely to lead to the breach of peace, or to promote feelings of hostility between different races or classes of the population; or
- (d) is prejudicial to the national interest, public order, or security of Malaysia.

Detention under ISA could not be challenged in any court and there is no role for judicial review. In 1989, Parliament passed amendments to the ISA that Section 8B(1) prevented acts of the Minister taken under the ISA being brought into question by the courts.<sup>13</sup> Dr. Mahathir argued that the government alone was able to determine, from information it received, what action was necessary to preserve the country's stability and security and that:

It is not appropriate for us to follow the practice in other countries where courts play an interventionist role in substituting the decisions of the Executive as this is against the concept of "separation of powers" between the Executive and the Judiciary. (Amnesty International 1999:13)

Print and electronic media were restricted – both print and television were limited to voicing good news about the government leaders and cooperation between races, while also promoting a single national identity. The "Rukun Negara" (national charter or ideology) had been introduced as a foundation of national ideology in Malaysia.<sup>14</sup> The media role as a "watchdog" of the government's activities has been non-existent in post 13 May 1969. Two media personalities and editors were arrested under ISA, A. Samad Ismail a New Straits Times editor, and Samani Mohd Amin, a "Berita Harian" editor, had been accused of being involved in supporting communism through the mass media. One of the Malay newspaper editors said on 24 August 1972:

It is not the newspaper's role to check on government. The papers here are not pro- or anti-government, but supporters of government. (Lent 1977:39)

The person responsible for drafting ISA in 1960, R.H.Hickling, agreed that the act had become tougher and was open to mishandling by the government for political reasons:

Since I drafted the original act, the ISA has been tightened up and tightened up until now there's no provision for judicial review. Unfortunately over the years the powers have been abused. Instead of locking up people suspected of organizing violence, which is the phrase used in the preamble to the ISA, it's been used to lock up political opponents, quite harmless people. (Wu Min Aun 1999:269)

In year 2002, Sarawak police chief Mohd Yusoff Jaafar in November threatened to use the ISA against those who posted "seditious" messages on a popular website, *Sarawak Talk* that could stir up racial and religious hatred or threaten the peace in the state. He added that the police could trace them even if they had pseudonyms and that his men were very close to apprehending them. In December 2002, a total of 10 persons were arrested under Section 28 of the ISA for allegedly disseminating false reports in e-mails warning of pre-planned bombings in Kuala Lumpur. Police also seized personal computers allegedly used to forward the e-mail. All of them have since been released on bail. The offence carries a fine not exceeding RM 5,000, imprisonment for a term not exceeding three years, or both. Following the incident, Deputy Education Minister Abdul Aziz Shamsuddin said that the United Malays National Organisation (UMNO) supreme council meeting had discussed the viability of imposing harsher sentences, including whipping, on those who spread rumours or send poison pen letters, as their actions could threaten national stability (Suaram 2003b:36).

**c. The Official Secret Act 1972.** The Official Secret Act (OSA) 1972 (Act 88) replaced the Malay States Official Secret Ordinance 1950 and was based on the British OSA 1911 and 1920. It was intended to curb and protect government secrets from falling into the hands of foreign agents or countries because this might be detrimental to national security. However, the OSA was also seen to impose wide, largely unjustified restrictions on the right to freedom of expression and press and on the examination and discussion of issues of public interest by the political opposition. By curbing access to public information and information relating to public interest, the electorate's right to know was curtailed and the means to uphold public accountability were weakened (Amnesty International 1999). The OSA defines an official secret as any document of the Cabinet, State Executive Council and any document concerning national security, defence and international relations. However, Section 2 of OSA defines official secret as any official letter, information, or material which is classified by the Minister, the Chief Minister of state or an appointed public officer as "Top Secret," "Secret," "Confidential" or "Restricted" (OSA 1998:277).<sup>15</sup> It can therefore cover any government document, and because of the unclear meaning of the word "secret," any minister and public officer could effectively classify any document, material, or information as secret whenever they wish. As a result, many government documents are unjustly classified as "official secret," which seriously undermines the right to information. Moreover, under Article 16A, the decision of ministers and appointed public officers in classifying "official secrets" is final and cannot be challenged in court. It is a clear denial of the right to judicial review and an abrogation of the power of the judiciary (Yap Swee Seng 2000).

When the government amended the Act in 1983 and again in 1986, there were many criticisms from the opposition as well as NGOs who were worried that the act could be misused (Aziz Bari 1999:17). The 1983 amendment increased the fine as a



response to the Bumiputera Malaysian Finance Ltd. (BMF) scandal. The BMF scandal had jeopardised government credibility when foreign media were producing articles sourced by government and public officers, involving some of Malaysia's political leaders. The scandal had caused BMF a major loss of RM 2.5 billion in its Hong Kong branch. It happened when three Hong Kong land brokers went bankrupt due to the downturn of land market in Hong Kong. Although the loss came from the ambiguity issue in loan and the flaw of documentation, close relations between BMF officers and few leaders might be the cause (Crouch 1996:202). Implication of the BMF case is that amendment of the OSA was done once again in 1986 to change from fine penalty to mandatory punishment for one year (Chandra Muzaffar 1989:141).

The latest conviction under Section 8(1)(i) OSA was of Mohamad Ezam Mohd Nor,<sup>16</sup> National Youth Chief of the National Justice Party on 13 January 2000 for disclosing two classified Anti Corruption Agency (ACA) reports. These concerned an investigation into corruption by two political leaders, Minister of International Trade and Industry Rafidah Aziz and former Chief Minister of Melaka Rahim Tamby Chik (MASSA, 22 January 2000:30).<sup>17</sup> No criminal proceeding was ever initiated against the named parties. A minister in the Prime Minister's Department, Rais Yatim, who is also the *de facto* law minister, has since said that the cases against the two ministers have been closed, as the evidence against them was unsubstantiated. However, in Ezam's speech to the court after his conviction, he said that the ACA, as supported by the attorney general's chamber, had recommended criminal prosecution against Rafidah on five counts of corruption and against Rahim on four counts of corruption (SUARAM 2003b:85).

Sections 16(1) and (2) of the OSA contain broad provisions allowing for arrest and detention without warrant, and substantially reverses the burden of proof. It states that "until the contrary is proven," any of the activities proscribed under the Act will be presumed to have been undertaken "for a purpose prejudicial to the safety or interest of Malaysia" (SUARAM 2003a:11). This makes it difficult for opposition leaders who are always critical towards government policies (Chandra Muzaffar 1989:137-39).<sup>18</sup> For example, in an early 1976 case, DAP Secretary General Lim Kit Siang was found guilty of receiving and revealing information about the purchase of Swedish warships for the Malaysian Navy, a controversy which prompted allegations within and outside parliament of excessive expenditure and possible misuse of public funds. The judgment in his case established that once official documents came into possession of an unauthorised party it was *ipso facto* a violation of Section 8, if it could not be proven that the transmission of the documents was with lawful authorisation. Lim Kit Siang was fined RM 15,000. However, on appeal, the Federal Court reduced the fine to less than RM 2,000 and Lim Kit Siang was therefore not automatically disqualified from Parliament (Amnesty International 1999:28).<sup>19</sup>

In 1992, civil servants and journalists allegedly involved in the leak of official documents concerning the controversial purchase of cars for Kuala Lumpur City Hall were threatened with prosecution. Then in 1995, two *Harian Metro* journalists in Johor were arrested under the OSA and remanded in custody for reporting a local kidnapping case using information which the police regarded as "classified." Charges were not pursued. In April 1999, Deputy Prime Minister Abdullah Ahmad Badawi (now Prime

Minister of Malaysia) stated that he would issue guidelines to government media officers to clarify that the OSA should not be used by officials to suppress information from the public (Amnesty International 1999).

Although the secrecy of government documents is important for national security, the use of the Act to shield corruption is clearly an abuse of power. The OSA provides that anything classified by the executive as secret is to be treated as such, no matter what its content and clearly, the OSA can be used as a tool to restrict public freedom and to prevent people's freedom of expression.

**d. The Sedition Act 1948.** The Sedition Act (SA) of 1948 (Act 15) was effected by the British colonial government in Malaya in 1948. It was known as Sedition Ordinance 1948, designed to contain any risk to the colonial administration triggered by local people's dissatisfaction and initiated by communist party insurgency. Chandra Muzaffar (2000:1) believes the reason behind the creation of this law by the British was not only to contain communist militancy but also to restrain rising nationalist movements, especially from UMNO, seeking to free Malaya from British colonisation.

After the events of 13 May 1969, the SA was tightened for purposes of national stability. Since the amendment of the Act in February 1971, the government strictly enforced the law and prosecuted anyone who questioned the citizenship status of non-Malays; national language and other communities' languages; Malay special rights or other racial interests; and Malay Rulers' sovereignty (Malaysia 1971:3).<sup>20</sup> Section 2 SA defines the word "seditious" as anyone who does or attempts to do, or makes any preparation to do, or conspires with any person to do any act which has or would have a seditious tendency, who utters any seditious words, or who prints, publishes or imports any seditious publication. Furthermore, it is a crime to have in one's possession, without lawful excuse, any seditious publication (Sedition Act 1998:391). Seditious acts also include organising a public hearing or publishing an article which could create public disorder or instability, i.e. picketing, strikes, demonstrations, riots and undermining the credibility of government bodies such as the judiciary and the police.

As a result of racial rioting on 13 May 1969, SA has been used to prevent the media from publishing news that could create anger or disharmonious relations between races in Malaysia (Aziz Zariza Ahmad 1988:147). The SA was used in 1971 to prosecute DAP parliamentarian Fan Yew Teng and party member Dr. Ooi Kee Saik. Fan Yew Teng had published an article entitled "*Alliance Policy of Segregation: Evidence Galore*" in the DAP newsletter *The Rocket*. This was the text of a speech by Dr. Ooi, alleging that the ruling coalition policies in a number of sectors were racially discriminatory. In 1975 Fan Yew Teng was found guilty and fined RM 2,000 or a six months' prison sentence. He automatically lost his parliamentary seat (Amnesty International 1999).

Shad Faruqi (1989:3) reviewed the SA in his paper entitled "*Laws Relating to Press Freedom in Malaysia*." He observed that the concept of sedition in Malaysia was much broader than in the United Kingdom, Ireland, India, and Australia. A Malaysian lawyer was, therefore, unable to give a clear definition of what constitutes free speech and what constitutes sedition, with the consequent effect that "this legal uncertainty is very

much in favour of the prosecutor." Under the SA of Malaysia, sedition could be committed in any of the following ways: inciting disaffection against any Malay Ruler or government; inciting unlawful changes to any lawful matter; inciting contempt for the administration of justice; raising discontent among the people; promoting ill will between races or classes, or questioning "sensitive issues" such as citizenship, the national language, special privileges of Malays and natives of Sabah and Sarawak and the status of the Malay Rulers (Mohammad Hashim Kamali 1998:278).

Sections 3(1) and 4(1)<sup>21</sup> have been used to tighten the control of political opposition and Section 9(1), control of the press. Section 9(1) states that anyone can be prosecuted for publishing in any press material considered by the Court as seditious (Sedition Act 1998:394-95). On 25 August 1998, opposition parliamentarian Lim Guan Eng was jailed for sedition and maliciously publishing false news for statements he made and published in 1995 accusing the Attorney General of mishandling allegations that the Chief Minister of Melaka was guilty of statutory rape of a schoolgirl. Because of his conviction, Lim Guan Eng was disqualified from being a Member of Parliament or holding elective office, prohibited from holding any position in a political party for five years, and barred from pursuing his profession as an accountant.

The most serious defect of sedition laws in Malaysia is that they represent a disproportionately serious interference with democratic debate. Any benefits they may be deemed to bring in terms of protecting public order, which the analysis above makes clear, are slight and far outweighed by the harm done to freedom of expression in its most important guise, as an underpinning of democracy. Lee Min Choon (1989:5) comments that some of the restrictions imposed under the SA "may be unreasonable." The writer further points out that judicial construction and elaboration by the judges have not helped matters. One particular judicial remark on the meaning of "disaffection" was analysed and the writer's assessment was that "this restriction tends to stifle the legitimate activities and aims of political opposition" (Mohammad Hashim Kamali 1998:279). However, the Act is reliable in dealing with hate speech, which could create racial tension and public disorder. In order to achieve a developed state in year 2020,<sup>22</sup> Malaysia will always depend on the SA and will always make sure that political stability and harmonious relationships between races be sustained.

**e. The Printing Presses and Publications Act 1984.** The Printing Presses and Publications Act (PPPA) 1984 (Act 301) was based on Printing Presses Ordinance 1948 used during Emergency period caused by communist insurgency. This Ordinance was revised in 1971 because of the rioting on 13 May 1969 to provide for powers to revoke the licenses of newspapers that aggravated national sensitivities or were detrimental to national development goals. The Ordinance became the PPPA in 1984. PPPA has also been used to strengthen and tighten the law regarding the monitoring of ownership of printing presses and the production of materials such as books, papers, and magazines.

Section 3 requires all publications to apply for a license or permit from Home Minister annually. This can be withdrawn without judicial review. It is systematically used to force the media to conform to government-approved views (SUARAM 2003a).

Section (3)(3) states: "The Minister may in his absolute discretion grant to any person a license to keep for use or use a printing press for such a period as may be specified in the license and he may in his absolute discretion refuse any application for such license or may at any time revoke or suspend such license for any period he considers desirable" (PPPA 1997:319-27). Under Section 7 of the PPPA, the government may at its discretion ban the publication, import, and circulation of any manuscripts deemed prejudicial to "public order, morality, security, the relationship with any foreign country or government, or which is likely to alarm public opinion, or which is otherwise prejudicial to public interest or national interest."

The PPPA further provides in Section 8A(1) for a jail term and/or heavy fine of RM 20,000 for editors, journalists, publishers, and printers if found guilty of "maliciously publishing false news," defined as "not taking reasonable measures to verify the news." Former Judge and Vice Chairman of the Malaysian Human Rights Commission, Datuk Harun Hashim (1999:13) commented that:

The Act (AMCP) is clearly unconstitutional if the constitutional rights stand alone ... It imposes restrictions on the right to freedom of speech and expression, but as such restrictions are permitted by the Constitution, the law is valid.

Chandra Muzaffar (1986:2) reviewing the PPPA wrote:

... the 1984 Printing Presses and Publications Bill removes whatever minor safeguards that now exist in checking the exercise of executive authority. It confers absolute power upon the minister concerned. Whatever his virtues as an individual, there is no doubt that he will be in a position to control the most fundamental of all freedoms—the freedom of expression. It may well give him the sort of dictatorial image that he may not desire or deserve.

The government has often threatened to terminate or not renew the license of some presses particularly critical newspapers from the opposition parties such as *Harakah* owned by Pan-Islamic Malaysia Party (Parti Islam SeMalaysia—PAS), *Suara* owned by Peoples Party (Parti Rakyat Malaysia—PRM), and *The Rocket* owned by DAP. The wider effects of the PPPA on freedom of expression and press, the media, and the development of civil society in Malaysia have been far reaching. During the political tensions of 1987 three major newspapers, the English-medium *Star*, the Chinese *Sin Chew Jit Poh*, and the Malay weekly *Watan* had their licenses revoked. They resumed publication in 1988 but the ban and resulting changes in editorial staff engendered a climate of self-censorship among journalists which continued through the 1990s. This provoked serious domestic criticism of allegedly one-sided coverage by the mainstream press of the Anwar Ibrahim case and the *Reformasi* movement in 1998 and 1999 (Amnesty International 1999). In 2000, the government party of BN did not renew the permits of magazines like *Detik*, *Tamadun*, *Wasilah*, and a newspaper *Eksklusif* for criticising the government on the issues of the Anwar affair and political rights.<sup>23</sup> *Harakah* has reduced its circulation from twice a week to twice a month for party members only and not for the public. Executive Director for the Committee to Protect Journalists (CPJ) Ann Cooper protested against government actions censoring the press and named Prime Minister Dr. Mahathir Mohamad as one of the enemies of the press because the government:

... severely restricts the Malaysian public's ability to evaluate important issues facing the country ... In the absence of such alternative voices, Malaysia cannot be called a democratic state. (freeMalaysia 2000a:1)

There are two reasons why the government wants to restrict freedom of the press and introduced PPPA in Malaysia. First, to ensure racial order and, second, to limit the ability of foreign presses to influence people's attitudes and minds towards the government and country as a whole. A statement former Information Ministry Parliamentary Secretary Zainuddin Maidin made in May 2002 at a seminar held in conjunction with World Press Freedom Day is typical:

The big problem faced by Asian countries now after the end of the Cold War is the infiltration by subversive elements from the developed countries through their media and use of local journalists to carry out the agenda of Western media imperialism. (SUARAM 2003b:77)

Dr. Mahathir (1999:71) expresses the same view with stronger stress on foreign imperialist agendas:

Make no mistake. The people who control the media control our minds, and probably control the world ... Not the national Governments of tiny developing nations ... or the Government of powerful nations. A very few people in the west control all the international media.

For these reasons, the government uses its power to strengthen the media laws particularly the PPPA, and to control almost all local media companies either directly or indirectly, which looks like it is the government that is seeking to control people's minds, not the western media. By controlling the media, the ruling party could also contain political opposition.<sup>24</sup>

Raja Aziz Adruse, a widely respected lawyer has written:

the time has come to consider seriously the validity and constitutionality of the ... Act, bearing in mind that its effect is to provide a prior restraint on the exercise of the right of free speech and expression. Instances of initially good Government becoming arrogant and corrupt through failure to check them are many. (Wu Min Aun and Hickling 2003:134)

Such is the proposal of a wise, experienced Malaysian counsel but, alas, it is likely to be ignored in official circles given his constant criticism of various governmental actions.

**f. Other Laws.** However, laws directly controlled by the government party have a big impact on the media industry in the country. For example, **Broadcasting Act** allows Information Ministry to control and monitor all radio and television channels and to stop the permit of any private company which broadcasts information that contradicts government policies or "Malaysian values" (Asian values from Malaysian perspective). **Imported Publication Act** tries to control and regulate the circulation and transmission of any foreign media publication in Malaysia and bestows upon government the full power to ban foreign publications that have a tendency to risk public order, morality, or the security of Malaysia. **BERNAMA Act (Berita Nasional Act)** was established in 1967 as the government official news agency named BERNAMA and was amended in June 1990 in order to give BERNAMA exclusive rights to distribute news, photographs, economic and financial data, and other materials. The amendment also allowed BERNAMA to cease being guided by international conventions protecting freedom of information (Commission on Human Rights 1998:3).

Evaluation of the stages of media freedom in Malaysia particularly through printed and electronic media is not merely in terms of laws restriction but also through shareholding of media companies that have good relations with the government party.<sup>25</sup> Discussion on media companies shares is fitted the no. 7, if controlling policy on media

exist then media freedom was unpractised. Many local newspapers in Malaysia especially daily-published newspapers were either controlled or owned by either government coalition parties under BN or companies which have strong relations with the ruling party. Fleet Company, controlled by the ruling party UMNO,<sup>26</sup> owns daily newspapers of *New Straits Times*, *Berita Harian*, *Business Times*, *Malay Mail* and *Shin Min Daily News*. Besides, *Utusan Melayu* and *Utusan Malaysia* newspapers have been published by Utusan Melayu (M) Berhad, which has a special relationship with UMNO. Vincent Tan owned Berjaya Group and a close friend of Prime Minister Dr. Mahathir Mohamad has published *The Star*, *The Sun* and *Watan* newspapers.<sup>27</sup> However, daily newspapers of *The Star*, *Nanyang Siang Pau* and *China Press* have been taken over by the Malaysian Chinese Association's (MCA) investment company of Huaren Holdings<sup>28</sup>. Tamil newspapers like *Tamil Nesan*, *Tamil Osai* and *Thinamani* have a link with a few personalities and leaders in the Malaysian Indian Congress (MIC) party<sup>29</sup> (Syed Arabi Idid and Safar Hasim 1993:10-11).

On the side of electronic media, monopoly is clearly inevitable as *RTM 1*, *RTM 2*, *TV3*, *Metro Vision*, and *NTV7* are all under government BN party ownership and possession. Radio and Television of Malaysia (RTM) is a public channel under the direct order and control of Information Minister who is also a politician and leader of BN. RTM has been used by the ruling BN to spread the party's agenda and propaganda for its survival and not for public purposes. The media has also been manipulated to grasp the people's attention and support in favour of the government party. The opposition gets bad publicity and negative coverage.

In the meantime, Stesen Televisyen Malaysia Berhad (STMB), commercially known as *TV3*, had been launched on 1 June 1984 and has a great link to the ruling party especially UMNO. In January 1993, a newspaper company of *New Straits Times Group* and *TV3* had been bought by a group of UMNO leaders for RM 870 million (Rais Yatim 1995:176). Now *TV3* is held by Malaysian Resources Corporation Berhad (MRCB), which owns 49% of the total shares (Gomez and Jomo 1997:92, MRCB 2001).

However, *Metro Vision* television station was owned by Melewar Corporation and Utusan Melayu (M) Bhd with combined shares of 75%. Tunku Abdullah who is also a great friend of Dr. Mahathir Mohamad, owns Melewar Corporation Bhd. On the other hand, the shares of *Metro Vision* are also dominated by Vincent Tan through the Berjaya Group and Quek Leng Chan<sup>30</sup> from the Nanyang Press Bhd (Gomez dan Jomo 1997:96). Meanwhile, another new television station called *NTV7*, launched on 7 April 1998, is owned by Natseven TV Sdn Bhd which is a company owned by Datuk Mohd Effendi Norwawi, the Agricultural Minister.

Besides television, radio stations are also monopolised by parties that have an interest and a good relationship with the government. With the establishment of a radio channel by the government through RTM, privately owned radio stations are controlled by individuals who have good relationships with national leaders. For example, ASTRO Station Broadcasting is a subcompany of MEASAT Broadcast Network Systems Sdn. Bhd., that produces seven digital radio networks such as *ERA*, *Hitz*, *Mix*, *MY*, *Light & Easy*, *Classic Rock*, *Opus* etc. is owned by the family of T. Ananda Krishnan (ASTRO,

2000).<sup>31</sup> T. Ananda Krishnan has a good relationship with Malaysian Prime Minister Datuk Seri Dr. Mahathir Mohamad. The first Malaysian private radio station, *Rediffusion*, established in 1970s, is owned by Arab Malaysian Group which is led by Tan Sri Azman Hashim. *Time Highway Radio* is owned by Renong Group, headed by Tan Sri Halim Saad who is close to the former Minister of Finance, Tun Daim Zainuddin. *Best 104* is managed by Voice of Johor Sdn. Bhd., a subsidiary of MADOS, owned by Johor royalty. There is a direct relationship between radio stations and government parties. However, private radio stations are more effective as entertainment channels compared to RTM radio stations which are used more to deliver information and government agenda (MASSA, 29 November 1997).

Media control through legislation and share ownership brings great impact on the level of media freedom in Malaysia. This is because media serves as a channel with dual functions. Media owners propagate their agenda to the public and at the same time, certain groups like students, non-governmental bodies, and workers' associations react and set their agenda in the newspapers. Yet, when media is controlled by share ownership and legislation, media reports tend to be more biased towards individuals who have interest in the companies and the government. This situation obviously breached criteria 2 and 6 in Table 1 because the ruling party practises "favouritism," broadcasting selected news to the public in order to gain more support in the election. According to criterion 6, criticism towards the government, especially from the opposition, will be prohibited. Table 2 shows that most of the news is more associated with the positive portrayal of the ruling parties. "Sensitive" political issues including race, language, and religion, are not allowed to be discussed even though they continue to dominate politics.

**Table 2: Content Analysis of Local Newspapers Regarding Barisan Nasional (BN) "Barisan Alternatif" (BA) During 1999 General Election<sup>32</sup>**

Party	Berita Harian	Utusan Malaysia	The Star	NST
Positive BN %	32.50	36.00	37.1	33.9
Negative BN %	4.50	5.00	2.4	3.4
Positive BA %	3.70	4.20	9.3	4.1
Negative BA %	30.90	18.80	17.7	22.1
Neutral %	28.40	35.80	34.5	36.5
Total	100 %	100 %	100 %	100 %
Frequency	486	377	439	239

Source: Communication Department, 2000.

Meanwhile, during the period of Anwar's issue, as the ruling elite tried to justify Anwar's ouster and maintain their grip on power, the mainstream media was used to vilify Anwar and discredit the *Reformasi* movement. Prior to the Anwar ouster, drastic changes occurred in the top management of the media organisations concerned involving people who were largely identified as "Anwar's men." Thus, the editor-in-chief of

*Utusan Malaysia* Johan Jaafar resigned; Ahmad Nazri Abdullah was removed from his position as editor-in-chief of *Berita Harian* only to be transferred to a UMNO-related company, Malaysian Resources Corporation Berhad; and the Head of Operation of *TV3*, Yunus Said, resigned. People who are closely associated with Dr. Mahathir later filled in the three vacant positions (Mustafa K. Anuar 2000). The charges against Anwar were given wide publicity and front-page treatment while Anwar and others implicated along with him were consistently denied the right to reply to the charges levelled at them. The aim, it appeared, was to secure a "public conviction" of Anwar and to shore up support for Prime Minister Dr. Mahathir Mohamad. The media also frequently portrayed the largely peaceful street demonstrators and *Reformasi* supporters as violent "rioters" and rabble-rousers hellbent on destroying the country's stability. This co-opting of the mainstream media to vilify Anwar was able to take place largely due to the prevailing, stifling media control (Netto 2002).

Jakob Oetama emphasises that development journalism refers to the reporting of the success of government projects as well as failures (Mustafa K. Anuar 2000). Over the years, however, this noble concept of development journalism has been somewhat corrupted in various situations to serve the interests of the ruling government, thereby giving rise to news reports that only provide a glowing picture of the state. Worse still, the press was not encouraged to entertain criticisms of certain government projects for the supposed fear that they would divert the attention of the people and the government away from so-called vital development issues and concerns. Thus, in the context of Malaysia, people normally read numerous reports about the officiating of government's development projects such as land settlement schemes, low-cost flats, etc. The reports always portrayed the positive side of the government but seldom the negative. The journalistic practice has the effect of portraying political leaders as always benevolent, compassionate and responsive to the crying needs of the ordinary citizens.

Evidently, the Malaysian government does not totally restrict media freedom. In reference to criterion 3 in Table 1, foreign media are still allowed to operate in Malaysia. However, Malaysian authorities have not hesitated to censor news reports and publications deemed detrimental to the country's image. In 1995, for example, the Malaysian government had threatened to ban "Asiaweek" as it always highlights misunderstandings between the Prime Minister, Dr. Mahathir Mohamad, and his former Deputy, Anwar Ibrahim. In April 1996, this magazine was banned in all government departments (Amnesty International, 1999). At the height of the demonstrations in support of Anwar Ibrahim throughout 1999, reports on Malaysia on the American global channels Cable News Network (CNN) and Channel News Broadcasting Corporation (CNBC) were censored. Satellite feeds of programmes by the British Broadcasting Corporation (BBC), American Broadcasting Corporation (ABC) and Television New Zealand (TVNZ) were reportedly jammed. Foreign reporters based in Kuala Lumpur have told the delegation of being prevented from airing their news reports on Malaysia, which forced them to secretly fly out the recorded tapes to Singapore (SUARAM 2003b:25).

There are also other ways in which Malaysian leaders make known their displeasure to journalists who publish disparaging articles. Malaysia's Pergau Dam case is



intrusive in this regard. The London Sunday Times of 24 February 1994, in a story headlined "Wimpey offered contract Bribes to Malaysian Prime Minister" alleged that the giant construction company, Wimpey, had offered an initial payment of RM 50,000 through a middleman to the Malaysian Prime Minister, Dr. Mahathir Mohamad. In retaliation, the Malaysian government decided to shut out British contractors from all infrastructure projects in Malaysia. This decision affected some big contracts that may have been won by big industries in Britain including General Electric, Balfour Beatty, and British Aerospace. Britain lost thousands of jobs. The end result was that the editor of the Sunday Times was removed by its owner Rupert Murdoch (Goonasekera 2000).

This phenomenon also occurred to opposition publications based on criterion 7 in Table 1. The government routinely threatens to use oppressive laws against dissenting voices. In June 1999, five months before the general elections, the Information Minister and UMNO's secretary general, Khalil Yaacob, explained that RTM's airwaves were reserved for the government and this was why the broadcaster would not be featuring any opposition voices in its news or other programmes. Information Ministry Parliamentary Secretary Zainuddin Maidin reportedly told Parliament in October 2002 that opposition parties will not be given air and radio time in state-owned television and radio stations because Malaysia is "undeveloped" (SUARAM 2003b:25-26). Opposition media like *Harakah* owned by PAS,<sup>33</sup> *The Rocket* by DAP, *Keadilan* by National Justice Party and *Suara* by PRM (People's Party), and independent media such as *Eksklusif*, *Tamadun* and *Aliran Monthly* were allowed to operate in Malaysia. However, newspapers and magazines of the oppositions are not on a daily basis, *Harakah*, *The Rocket*, *Keadilan* and *Suara* are biweekly while *Aliran Monthly* and *Tamadun* are published once a month. The new regulation of the party's newspaper has been applied when public antagonism towards the mainstream media increased noticeably over the unfair coverage of the Anwar issue. The mainstream media's lack of credibility resulted to a dramatic increase in alternative media's popularity. In particular, *Harakah*, which used to be the biweekly newspaper of PAS, increased its circulation extraordinarily, from approximately 60,000 to 300,000 per issue, in the wake of Anwar's dismissal. The total sales of "Harakah" reached around RM 700,000 per week. Considering the estimated 200,000 circulations of the two main English newspapers, *New Straits Times* and *The Star*, *Harakah* ostensibly became a *de facto* mainstream newspaper after Anwar's downfall (In-Won Hwang 2002). *Eksklusif* newspaper is also biweekly but since 15 April 2000, when its license was voided, there had been no offer to renew the permit by the Ministry of Home Affairs. Regardless of all the controversies, the media is still an important channel in practising freedom of expression in Malaysia. It is an alternative channel for the public to receive information about government policies and issues regarding the ruling parties.

Nevertheless, media restriction has faced a greater challenge ahead with Internet existence. Malaysia, which has 900,000 Internet subscribers with estimated 4 million users, has not applied this restriction (MASSA, 22 January 2000).<sup>34</sup> Just after Anwar Ibrahim was sacked and during the *Reformasi* movement period, the government had difficulties to answer and stop the criticism from the Internet sent by pro-*Reformasi* movement websites such as *Laman Reformasi*

(<http://members.tripod.com/~mahazalimtwo>), *freeMalaysia* (<http://www.freemalaysia.com>), and *Reformasi Dot Com* (<http://www.reformasi.com>). Opposition parties have found easier ways to disseminate information to the public about their activities with the establishment of websites that operate daily. There is also a website resembling daily newspapers like *Malaysiakini* website (<http://www.malaysiakini.com>) that tries to balance government and opposition reports by providing an alternative channel for the public (Far Eastern Economic Review, 20 January 2000). Freedom of expression is so natural in the Internet and this eases the public to voice out their opinions to the government and to receive alternative information in addition to information from media controlled by the government.

Believe it or not, *Malaysiakini* is the only independent press in Malaysia and others are mostly supporters of government parties and a few opposition parties' newspapers that are published only twice a month. In 2003, Malaysia's only independent web-based daily *Malaysiakini* had been raided by the police because of a seditious article sent by a reader about racial discrimination by Malays to other races. UMNO Youth, headed by (information chief) Azimi Daim, lodged the report on Friday, 17 January 2003 and police raided *Malaysiakini* on Monday, 20 January 2003. Fifteen computers and four servers were seized in the raid and this caused disruption in the newsroom for about 10 hours that day. The *Malaysiakini* Editor-in-Chief Steven Gan and four sub-editors were called for questioning on Tuesday, 21 January 2003 and Wednesday, 22 January 2003, for several hours each.

Interested parties own the newspapers, TV stations, radio stations, Internet sites, and media in any form. Usually Governments want only their views to be conveyed or aired. But if they cannot own the media, their political parties can buy them. In this way, the ruling party can impress upon the readers, listeners, and watchers only their ideology and agenda. The same idea also could be done by any opposition party or company, using the opportunity to stress their agenda and values to the audiences. Former Information Minister Mohamed Rahmat once asked: Are Asian editors committed to this process by moulding and informed citizen capable of making judicious distinctions between the "freedom without responsibility" attitude of those in the West and the "freedom for the greater good of the nation" attitude of many of us here in Asia, even if that choice means lower returns for shareholders (Syed Ahmad Idid 2001)? Although he was stereotyping the distinction between the West and the East (Asia), the essential issue here is how to bring goodness to the country. If freedom of the press or media could bring disaster to the country, limitation on the practices of the media could be reasonable but must be justified. So far, the Malaysian government restricted the practices just for political stability and racial harmony, avoiding the second racial rioting from emerging in the future.

### **Lobbying for Media Freedom**

Media freedom is actually a demand of rights to free expression of opinions. It is stated in a joint declaration with non-governmental bodies in Asia that produced *Bangkok NGO Declaration on Human Rights*, held on 24-28 March, 1993. According to this declaration, the right to freely express the opinion is a big challenge to developing nations including Malaysia especially towards the spirit of democracy that guarantees the press civil and

political rights freedom (Bangkok NGO Declaration on Human Rights, 1993).

Although the government feels that media freedom should be restricted, the opposition parties and the NGOs think that media freedom could bring more balance in terms of political rights and people's involvement in the decision-making processes for a better Malaysia. The opposition parties always suffer from negative treatment due to imbalanced coverage by the government-controlled media or close associate company owners to the ruling party. Besides, journalists are also inconvenienced to report events, edited by the editor, unpublished, prosecuted of being seditious, applying self-censorship or sacked by media company. World Press Freedom Day on 3 May 1999 saw 581 Malaysian journalists signing a memorandum calling for the repeal of the PPPA which was handed over to then Home Minister, also Deputy Prime Minister, Abdullah Ahmad Badawi. "I shall read it. I will let you know," Abdullah told the group. It was the last the journalists heard from him on the matter (SUARAM 2003, Syed Ahmad Idid 2001). A boycott of mainstream media (New Straits Times, TV3, Utusan Malaysia, and Berita Harian) was also organised in 2000 by the opposition parties.

Meanwhile, Kumpulan Aktivis Media Independen (KAMI) was set up at about the same time as the crackdown in 2000 against the Malay language press. KAMI basically groups journalist from independent Malay language media have been the target of official crackdowns. One of its key activists is publisher Ahmad Lutfi, who has borne the brunt of recent crackdowns through the banning and restriction of sales of his publications. KAMI is lobbying for the government to show leniency to the publications that are critical to government policies and permit the selling of the materials. When two Chinese language newspapers – Nanyang Siang Pau and China Press – were taken over by the investment arm of the MCA party in 2001, there was a backlash, especially from the Chinese community and from journalists themselves. The fractional split in the MCA widened. Galvanised by public outcry, four press freedom committees (Press Freedom Action Committee [Nanyang], China Press Freedom Action Committee, Committee Against Takeover, and The Writers Alliance for Media Independence [WAMI]), comprising mainly of journalists and writers from the two papers as well as media activists, sprouted (Netto 2002).

Similarly, some journalists, with the support of *Aliran Monthly* magazine, launched a "citizen initiative," named Charter 2000, calling for freedom of expression to be respected and higher standards of professionalism in media reporting (SUARAM 2003). Charter 2000 is guided by the following basic principles in its quest to realise media freedom within the context of civil society in Malaysia (Netto 2002):

1. The media must be plural, democratic, and accessible.
2. The media must be committed to upholding human rights, democracy, and the rule of law.
3. The media must uphold ethical responsibility and professionalism.
4. The media must consciously promote justice, freedom and solidarity.
5. The media must empower the disenfranchised, downtrodden and dispossessed.

The Malaysian Charter On Human Rights, which has been endorsed by 49 Malaysian NGOs is more explicit in championing media freedom. Article 14 of the Charter

entitled "Freedom of Expression and Access to Information" states the following:

1. Everyone has the right to freedom of opinions and responsible exercise of the freedom of expression without interference and persecution.
2. Everyone is entitled to seek, receive, and impart information and ideas through an independent and responsible mass media free of political censorship and monopoly.
3. The media of mass communications shall not be subjected to licensing at the discretion of Government.
4. Mass communication media owned by the state must be governed and run by an autonomous impartial board made up of representatives appointed by the state, the non-governmental sector and opposition political parties.

However, the government responds negatively to the Charter because it is not legally binding, thus, making it ineffective for Malaysians to implement. The NGOs are continually campaigning to the government for more openness and less restriction towards the media for a better Malaysia. But from the government's point of view, the better Malaysia is media with responsibility to national security and government's credibility, and then the media should be controlled before being manipulated to havoc the country.

SUHAKAM has produced a report entitled "A Case for Media Freedom: Report of SUHAKAM's Workshop on Freedom of the Media" that was based on a workshop organised by SUHAKAM on 1 August 2002, at the 30<sup>th</sup> floor of the SUHAKAM office. SUHAKAM has invited speakers, Chor Chee Heung, Zainuddin Maidin, Mohd Safar Hashim, Steven Gan, Ahmad Lutfi Othman, and Mohd Hamdan Adnan, to present papers and discuss deeply the issue of media freedom.<sup>35</sup> From the workshop's feedback, a few recommendations have been proposed by SUHAKAM to the government including the enactment of a Freedom of Information Act; review of the PPPA 1984, OSA 1972, ISA 1960, SA 1948, and Defamation Act 1957; proposals to improve the quality of media reporting; and press accreditation tags for better accessing to report the events (SUHAKAM 2003). However, the government has yet to respond to these recommendations by the SUHAKAM or any proposals by the NGOs, and seem uninterested to comment on any issues that are related to media freedom.

## Conclusion

The UN Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Abid Hussain wrote in his 1999 report on Malaysia:

Freedom of the media in Malaysia has been hindered by exerting political and legal pressure on journalists, which has led to widespread self-censorship in their daily work. The Special Rapporteur considers the dependence of the mass media on the State through State ownership or economic control by the ruling party to be undesirable. (Commission on Human Rights 1998)

Clearly, there is direct and indirect control of the media by the Malaysian government, directly through restricted laws of ISA, OSA, SA, and PPPA, and indirectly through share ownership by corporate figures that have close relationship with government leaders.

Inclusively, the government rules the country by restricting the media and limiting people's right to free expression. However, Malaysians have never fully had the right to free press and coincidentally agree with the government view of restricting media free-

dom towards racial harmony, political stability, and economic growth. This media analysis has suggested that such limits could be based on a social good of informed decision-making with the harmful consequences of media activities and reports on individuals and on society, a consideration of whether persons are being treated as mere means or as ends in themselves, and effects of the media on the content and quality of public discourse in Malaysia. But the government from the top-down system of governance has always determined the content and quality of public discourse in Malaysia. Although people have the right to freedom of expression provided by the constitution, on the contrary people do not think the right is essential in a multiracial country like Malaysia.

Quoting from the word of Nik Abdul Rashid, former professor of law, who eloquently summed up the conundrum faced when attempting to balance press freedom with other competing concerns:

How much freedom do we need in order to develop the kind of journalism fit for the country? Or how much freedom should be given to media people to develop that kind of Malaysian journalism? Is like asking how much water and fire are needed to prosper. With too little water, we go thirsty, but with too much water, we will be drowned. With too little fire, we may have to go "raw", but too much fire, we perish. Press freedom is vital, but too much freedom is fatal. (Abu Talib Othman 2003)

Without the press, there is no freedom of expression. Controlling the press means controlling people's freedom of expression. The media should play a more responsible role to create well-balanced reports for public needs as well as the government policies. Because of the unbelievable factor of the powerful media roles, the government tend to restrain the media roles for their interests, and it is happening in Malaysia. The people should have participated in solving community and national problems and influencing government decision-making processes even though they have elected a leader in their constituency for representing them. The most important thing about the function of the media is the "watchdog" role to balance and monitoring government's characters and responsibilities for not moving away from the basic needs of common good as well as people' welfare and problem-solving.

## Notes

1. Welsh (1996) has done a survey in three areas: Kuala Lumpur (KL), rural Peninsular Malaysia, and Sabah in Borneo. Within KL, the locations polled included the city centre, Ampang, Kajang, Kampung Baru, Kampung Pandan, Petaling Jaya, Shah Alam, and Ulu Kelang. Outside of KL, the locations include Bangi, Kota Kinabalu and outlying areas, Kuala Pilah, Melaka, northern Penang, and Taiping. A total of 395 surveys were conducted, 123 in KL and 231 outside of the capital. This survey was trying to identify political attitude and awareness of the people towards democracy and civil rights particularly freedom of expression. Survey findings suggested that Malaysian respondents had a broad understanding of democracy; were willing to limit democracy, particularly under conditions that threatened social order; and contrary to predictions of democratisation, were not adopting more democratic attitudes as a result of economic growth. These are the highest frequencies for answers in each of the open-ended questions posed. Respondents were able to provide different answers; when a respondent gave more than one answer to the same question, the first response given was considered the "first priority" answer. Percentages are rounded. For all the capital results listed in all tables,  $n = 164$  and non-capital results,  $n = 231$ , give or take a small number due to non-response. For ethnic discussions,  $n = 99$  Malays, 40 Chinese, and 25 Indians in the capital and 73, 50, and 49 outside, respectively. For class discussions, lower class is  $n = 64$ ,

- middle class n = 66, and upper class n = 28 in KL and 122, 72, and 37, respectively, in non-capital areas.
2. The four questions addressing the media were: 1. "Is it okay if the media is allied with political leaders, or should it be independent? Allied (2)/ Independent (1)/ Other (3)"; 2. "Should the media be allowed to publish or broadcast even the most sensitive issues or should there be laws that limit the media's freedom in certain areas? Allowed (1)/ Limited (2)/ Other (3)"; 3. "If a newspaper regularly criticizes the government, should it have the right to continue publishing or should the government have the power to close it down? Publish (1)/ Close Down (2)/ Other (3)"; 4. "Consider the way the media reports news about the government. Is the media along doing a good job of watching over the government, is it too critical, or is it not critical enough? Good Job (1)/ Too Critical (2)/ Not Critical Enough (3)/ Other (4)." (Welsh 1996:894).
  3. The legal environment encompasses an examination of the laws and regulations that could influence media content as well as the government's inclination to use the laws to restrict the ability of media to operate. It assesses the positive impact of legal and constitutional guarantees for freedom of expression, as well as the potentially negative aspects of security legislation, the penal code and other criminal statutes, penalties for libel and defamation, and registration requirements for both media outlets and journalists.
  4. In considering political influences, the Freedom House evaluates the degree of political control over the content of news media. Issues examined in this category include access to information and sources, editorial independence, official censorship and self-censorship, the ability of the media to operate freely and without harassment, and the intimidation of journalists by the state or other actors.
  5. The Freedom House examines economic pressures on the media, which include the structure of media ownership, the costs of establishing media outlets as well as of production and distribution, the selective withholding of state advertising or subsidies, official bias in licensing, and the impact of corruption and bribery on content.
  6. Each country is rated in three categories, with the higher numbers indicating less freedom. A country's total score is based on the total of the three categories; a score of 0-30 places the country in the Free Press group, 31-60 in the Partly Free, and 61-100 in the Not Free press group<sup>6</sup>.
  7. I will use the word "press" and "media" interchangeably.
  8. In this chapter, only three theories of press freedom have been discussed except the Soviet theory. Apparent from its name, the *Soviet* theory is closely tied to a specific ideology; the communist. Siebert et al (1963) traces the roots of this theory back to the 1917 Russian Revolution based on the postulates of Marx and Engels. The media organisations in this system were not intended to be privately owned and were to serve the interests of the working class. However, there is a major difference between the two theories that needs to be clarified: The mass media in the Soviet model are expected to be self-regulatory with regard to the content of their messages. Also, the Soviet theory differs from the authoritarian theory in that the media organisations have a certain responsibility to meet the wishes of their audience. Still, the underlying standard is to provide a complete and objective view of the world according to Marxist-Leninist principles. Today, the name of this theory is only of historical interest. Beginning in the mid-eighties and continuing after the fall of the Soviet Union, Russia has performed a mass media model closer to the social responsibility principle. The clearest current example of the Soviet media theory is how the media function in China, where TV, radio, and newspapers are controlled by the communist government (Skjerdal 1993).
  9. This criteria and measurement of media freedom is based from one research measurement by Department of Journalistic Studies, Missouri University, US.
  10. Murray Hiebert was facing a jail sentence as he prepared to appeal a conviction for writing a "defamatory" article about the speedy processing of a lawsuit brought by the wife of a prominent Appeal Court judge. Addressing the growing level of spurious litigation in the Malaysian courts, Hiebert highlighted the RM 6 million damages being sought by the mother of Govind Sri Ram against the International School of Kuala Lumpur for "unfairly dropping" her son from the school debating team. Noting the student's father as Court of Appeals judge Gopal Sri Ram, Hiebert commented that "many are surprised at the speed with which the case raced through Malaysia's legal labyrinth". Awaiting appeal, Hiebert had his Canadian passport held for two years (Hilley 2001).
  11. Article 181 entitled "Saving for Rulers' sovereignty, etc. says:
    - (1) Subject to the provisions of this Constitution, the sovereignty, prerogatives, powers and jurisdiction of the Rulers and the prerogatives, powers and jurisdiction of the Ruling Chiefs of the Negeri

- Sembilan within their respective territories as hitherto had and enjoyed shall remain unaffected.
- (2) No proceedings whatsoever shall be brought in any court against the Ruler of a State in his personal capacity except in the Special Court established under Part XV.
12. Section 8(5) mentions "if the Minister is satisfied that any purposes mentioned in subsection (1) it is necessary that control and supervision should be exercised over any person or that restriction and conditions should be imposed upon that person in respect of his activities, freedom of movement or places of residence or employment, but that for that purpose it is unnecessary to detain him he may make an order (hereinafter referred to as "a restriction order" imposing upon that person all or any of the following restrictions and conditions:
- for imposing upon that person such as may be specified in the order in respect of his activities and the places of his residence and employment;
  - for prohibiting him from being out of doors between such hours as may be specified in the order, except under the authority of written permit granted by such authority or person as may be so specified;
  - for requiring him to notify his movement in such manner at such times and to such authority or person as may be specified in the order;
  - for prohibiting him from addressing public meetings or from holding office in, or taking part in the activities as adviser to, any organization or association, or from taking part in any political activities; and
  - for prohibiting him from traveling beyond the limits of Malaysia or any part thereof specified in the order except in accordance with permission given to him by such authority or person as may be specified in such order.
13. Section 8B(1) as amended read,  
 "There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or decision made by the Yang di-Pertuan Agong or the Minister in the exercise of their discretionary power in accordance with this Act, save in regard to any question on compliance with any procedural requirement in this Act governing such act or decision."
14. "Rukun Negara" has a list of five national principles; Belief in God, Loyalty to the King and Country, Upholding the Constitution, Rule of Law, and Good Behaviour and Morality.
15. Section 2B allows the Minister and the Chief Minister of State appoint public officers through a letter of approval signing by the Minister and the Chief Minister of State to classify any official letters, information or material as "Top Secret", "Secret", "Confidential", or "Restricted" (OSA 1998:280). The Minister and the Chief Minister of State have a total control of the government documents and can hold it as secret as long as they want.
16. Mohamad Ezam was also a Political Secretary of sacked and imprisonment former Deputy Prime Minister, Anwar Ibrahim and currently a Youth Chief of Keadilan Party. At the time of conviction, Ezam was already under incarceration without trial under the ISA; he had been imprisoned since April 2001 for allegedly attempting to overthrow the government through "militant" means. He also faces numerous other criminal charges of sedition, unlawful assembly and rioting (SUARAM 2003b).
17. Section 8(1)(i) says:  
 "communicates directly or indirectly any such information or thing to any foreign country...or to any person other than a person to whom he is duly authorised to communicate it;" (OSA 1998:285-286)
18. Section 16(1) and (2) explain (OSA 1998:293) -
- it shall not be necessary to show the accused person was guilty of a particular act tending to show a purpose prejudicial to the safety or interests of Malaysia;
  - notwithstanding that no act as stated in subsection (1) is proved against him, the accused person may be convicted if, from the circumstances of the case, his conduct or his known character as proved it appears that his purpose was a purpose prejudicial to the safety or interests of Malaysia;
- 19 Lim Kit Siang was found guilty under Section 8(1)(b) on leaking any official secrets or codes, signals, or secret words about war equipment and other tools, equipment and vehicles which being used for security and peaceful pur-

pose of Malaysia (OSA 1998:285).

<sup>20</sup> A seditious tendency is then defined in Section 3 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 the 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.
21. Under Section 4(1) of the Sedition Act any person who:
  - a) does or attempts to do, or makes any preparation 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 publications, shall be guilty of an offence, and shall on conviction be liable ... to a fine not exceeding RM 5000 or to imprisonment ... not exceeding three years or to both ... "
22. Developed country is the vision of Malaysian society having a forward looking agenda – *Wawasan 2020*, or Vision 2020—incorporates the prospect of developing a "mature consensual, community-oriented Malaysian democracy that can be a model for ... developing countries" (Mahathir 1991:2-4).
23. "Detik" has been given a letter by the Home Minister to give a reason why the magazine should not be banned because of not informing the Home Ministry that the magazine has elected its new Chief Editor. "Wasilah" has been banned because the magazine did not put its full name "Al Wasilah" in the registration. Meanwhile "Tamadun" had been accused and banned for writing the articles that could suspend people's reliance to the government. However, "Eksklusif" newspaper has been warned for spreading rumours (freeMalaysia 2000b:2).
24. Former Information Ministry Parliamentary Secretary Zainuddin Maidin told Parliament in October 2002 that opposition parties would not be given air and radio time in state-owned television and radio stations because Malaysia is "undeveloped". He said, "We are still a developing country. We will only be developed when *orang kampung* (villagers) do not buy the issues of race and religion raised by the opposition." He added that opposition parties could disseminate their views through the commercial media and the Internet (SUARAM 2003b:78-79).
25. In January 1993, a few UMNO party members for the price of RM870 million have bought New Straits Times Group and Stesen Televisyen Malaysia Berhad (TV3) (Rais Yatim 1995:176).
26. After Dr. Mahathir became UMNO President in 1981, he appointed Tun Daim Zainuddin (later become Finance Ministry) as Chairman of Fleet Company, a main Malay corporate company to fund UMNO activities (Gomez dan Jomo 1997:52).
27. The Berjaya Group company is owned by Vincent Tan (51% of company shares) who bought 20.5% of Star Publication (M) Bhd company shares that publish 'The Star' newspaper. In September 1994, half of 20.5% shares owned by Vincent Tan, sold to Tengku Adnan Tengku Mansor who is a member of UMNO Supreme Council, a Director of Berjaya Singer Bhd. Company (sub company of Berjaya Group), and also owned "Watan" newspaper. Plus, Vincent Tan also owns "The Sun" newspaper through Fikiran Abadi Sdn. Bhd. company (Gomez dan Jomo 1997:155).
28. "Nanyang Siang Pau" and "China Press" have been bought by MCA from Hong Leong Group on the price of RM230 million on 24 June 2001 after a party referendum being conducted among MCA representatives where 1,176 (53%) votes in favour to the take over and 1,019 (47%) opposing votes (Ng



- Boon Hooi 2001:1-2). This issue of taking over has worsened the MCA internal crisis between two leaders, Ling Leong Sik as MCA President and Lim Ah Lek as MCA Deputy President.
29. Datin Indirani, wife of MIC President and work Minister Samy Vellu, possesses the "Tamil Nesan" newspaper. Meanwhile, "Tamil Osai" and "Thinamani" are also owned by a few MIC members (Ramanathan. 1992:11).
  30. Quek Leng Chan leads Hume Industries Company who has a close link with the Fleet Group which is owned by UMNO. Hume Industries used to possess 84.9% of shares in the Nanyang Press Bhd Company (Gomez dan Jomo 1997:67).
  31. MEASAT Broadcast Network Systems Sdn. Bhd. is a broadcasting company, has been shared by Khazanah Nasional Berhad a Malaysian government investment company and Usaha Tegas Entertainment Systems Sdn. Bhd. which is owned by T. Ananda Krishnan who also owns Kuala Lumpur Twin Towers (one of the tallest office buildings in the world).
  32. NST means the "News Straits Times". BA is an acronym for coalition opposition parties "Barisan Alternatif" (Alternative Front) that consisted of four parties i.e. PAS, DAP, Parti Keadilan Nasional (National Justice Party), and Part Rakyat Malaysia (PRM-People's Party). Several students of Communication Department, Universiti Kebangsaan Malaysia who were also taking Communication Seminar (MH3044) subject, had conducted this research on the 1999 General Election. The finding had been presented on 24 February 2000 at Communication Department, Universiti Kebangsaan Malaysia.
  33. Starting in March 2000, "Harakah" is only allowed to publish twice a month. On 2 March 2000, Deputy Prime Minister and also a Home Minister Abdullah Ahmad Badawi explained the decision which involved "Harakah" as a way to standardise the regulation of all political parties own newspaper including owned by the government party. Though the Prime Minister Dr. Mahathir Mohamad revealed that the action against "Harakah" was because of the newspaper has been sold to the public, which is supposed to sell to the PAS members only (New Straits Times, 3 March 2000:1-2).
  34. From a report on the "Straits Times" in Singapore, Multimedia, Communication and Energy Minister Leo Moggie clarifies that the government believes the misuse of the Internet happens even though the government tries to control it. He clarifies further:
 

"The Internet is a wide communication net, makes rules and regulations are useless because the Internet (computer) users still can misuse purposely. The government has given an assurance to not censoring the Internet and the policy is permanent." (MASSA 22 January 2000:15)
  35. Chor Chee Heung is Deputy Minister of the Home Ministry, Zainuddin Maidin was Parliamentary Secretary for the Information Ministry (now Deputy Minister), Mohd Safar Hashim is Professor of Communication Faculty of UKM, Steven Gan is Chief-Editor of "Malaysiakini," Ahmad Lutfi Othman is Spokesperson for KAMI, and Mohd Hamdan Adnan is SUHAKAM commissioner.

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