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## FREEDOM OF SPEECH AND THE PANDEMIC

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### Abstract:

Freedom of speech has always been debated as critical. A lot of people misconceived them as total rights which permits them to exercise them without limitations. Many have exceeded the limit by expressing themselves inappropriately. Freedom of speech is important to maintain human dignity. But some quarters have misunderstood it so much so that this right has been distorted and deformed to suit some private agenda. There has been prosecution made under the anti-fake news law relating to the dissemination of Covid 19 news to instil panic in the people. This paper is important as it provides some insights on how laws are made to restrict freedom and how such rights should be exercised with responsibility and accountability to bring about overall peace and harmony.

### Keywords:

Pandemic, Freedom Of Speech, Hate Speech

### Introduction

Freedom of speech is one of the most fundamental rights that people enjoy. It is inevitable to categorically state that this right is essential to the existence of democracy and human dignity. This right is also being given special attention under international human rights law, Article 19 of the Universal Declaration of Human Rights. The issue of freedom of speech has now become a heated topic debated amongst legal scholars and human rights activists as it is the life blood of free society (Gordon Brown, 2016).

The position of this right in Malaysia, the right to speech and expression and the restraints on this fundamental liberty are provided in Article 10(1)(a) of the Federal Constitution which states that subject to clauses (2), (3) and (4), every citizen has the right to freedom of speech and expression. Nevertheless, there is no further elaboration of the scope and extent of this

right and its constituent parts. Freedom of speech and expression is a combination of many rights including not only the right to express but also the right to seek, receive and impart the information and ideas (Reeder, F. (1962). It is also provided in many forms not only confined to oral speech. It includes communication by signs, symbols and gestures, freedom of the press and to propagate ideas through advertisement, works of art, music, videos, film and others (David Stasavage, 2016).

Without freedom of speech, democracy will be nothing more than a fallacy. As such, it is argued that this right should be protected as it is necessary to the democratic polity. The following discussion will highlight the law relating to restriction of this freedom including those that affect covid 19 issues.

### **Security Reason**

The practice in the world regarding freedom of speech has been consistent. For example, in USA under the executive order 13292, the executive branch can classify information as “top secret,” “secret,” or “confidential.” Such information is not available to the media or general public and is only available to government officials on a “need to know basis. “This information includes military plans, intelligence activities, scientific and technical material, and information about the strengths and weaknesses of programs relating to national security. The question of whether the public should have access to this material can be problematic because sometimes secrecy truly protects national security, and at other times an administrative may have an ulterior motive for keeping information secret.

Malaysia adopt the same attitude where this right is not a ticket to free speech. Dow Jones Publishing vs AG (1989) 2 MLJ 385 case is a testimony to this where it was held that the right of access to information is not part of constitutional guaranteed right.

The restriction is fortified when right to free speech is also not open to parliamentarian even though it is a privilege given to them under art 63 FC. The application of this law can be seen in ruling of Federal Court in Lim Kit Siang v PP where it was held that Appellant’s status as Member of Parliament and leader of Opposition does not confer him immunity from OSA. A person can be convicted by OSA regardless of his noble intent when disclosing the secrets.

The OSA protect all classified information and the case of PP vs Phua Keng Teng (1986) 2 MLJ 279 had shown how the court supported the OSA over access to information. In this case the judge upheld the validity of OSA on the ground that maintenance of official secret is essential for the security of the state. However, to what extent the withholding of information could protect national security is yet to be debated.

The other reason why access to information is restricted is to ensure that hasty publication or baseless allegation is not cultivated. For example, the constitutionality of this section 8 of Printing Press and Publication Act 1984 was challenged but unsuccessful in PP vs Pung Cheng Choon (1994) 1 MLJ where the court held that the impugned law actually impose blanket restriction on false news without the need to established any link to the permissible restriction under art 10(2). This is one way the court navigate the crisis against free speech irresponsibly used.

The danger of uncontrolled freedom of speech have also been shown in the case of *Lim Guan Eng vs PP* (1988) 3 MLJ, a 16-year-old girl was violently harassed by several man. She was detained by the police but not placed in the lock up. Subsequently she was put in protective custody at a rehabilitation centre. The accused, a member of parliament published a pamphlet which contained the words “victim imprisoned, criminal free”. The words victim imprisoned were held by the court to amount to false news that have been maliciously published.

This has led to the most common ground of restricting freedom of speech which is on public order ground. It also includes restricting right of speech in time of uncertainty like the pandemic attack we are experiencing now. It is this freedom that were often abused. Since Malaysian society was made up of many races, hence, restriction on freedom of speech and expression on the ground of public order is very essential. Reference could also be made to some of the relevant laws under this heading, they are the Police Act 1967, the Sedition Act 1948, and the Printing Presses and Publications Act 1984.

Freedom of speech on public order ground generally have been under control due to the above laws, the situation in time of pandemic likewise. What needs to be controlled is the spread of news about the pandemic. It must be proportionate to public interest because disinformation may open the gateway to manipulation. Disinformation is the spreading of false information with the deliberate intention to deceive, whereas misinformation refers to the inadvertent sharing of such material, without the intent to deceive or cause harm. Recent examples in Malaysia in relation to Covid-19 include false claims that military personnel were authorised to assault civilians, that various hospitals were desperately seeking funds and equipment, and that certain areas, facilities or shops were contaminated with the virus, all of which were prone to causing fear and anxiety to the public. (Eric Paulsen, 2020)

Others have opportunistically used the pandemic to exploit and scam people, including businesses falsely claiming to be authorised by the government to implement measures related to Covid-19 or sowing confusion by inaccurately or misleadingly publishing information pertaining to government initiatives. The use of WhatsApp and other messaging apps to disseminate false information is particularly difficult to control. The promotion of alleged cures for Covid-19 which have proliferated in Malaysia, including the consumption of turmeric water and garlic, are misleading and risk giving people a false sense of security. The risks of disinformation can be extremely high, as seen from the tragic example in Iran, where hundreds of people died after drinking industrial or bootleg alcohol following fake reports that it could cure Covid-19 (Eric Paulsen, 2020).

Coming back to freedom of speech on public order ground the cases involved can be traced back during the early period of Merdeka. In the case of *Madhavan Nair & Anor v Public Prosecutor* [1975] 2 MLJ 264, the appellants argued that the restrictions issued by the Police which prohibited the discussion on sensitive issues of Malay language as the national language and policies related to education were unconstitutional and against Article 10. The court held that the clauses (2), (3) and (4) of Article 10 allowed Parliament to restrict the freedoms under Article 10 and thus was constitutional.

The danger of this freedom is evidence in *Param Kumarasamy* it was held that intention to incite to violence, tumult or public disorder is not a necessary ingredient of the crime. As long as the words were intentionally published and they had a tendency to cause ill will etc., the

offence is complete. The prosecution need not prove that the act actually caused hostility, ill will or disaffection. A tendency is sufficient. (Shad Saleem Faruqi, 1992.)

Intention to incite public disquiet can also be seen in Alvin Tan's case. Alvin Tan and Vivian Lee were jointly charged and prosecuted for making a seditious posting on their Facebook page by uploading a photo of them eating bak kut teh (a Chinese herbal pork soup with a caption "Selamat Berbuka Puasa" that means Happy Breaking Fast, Malay greeting for breaking fast. The couple pleaded not guilty; therefore, the couple were denied bail and imprisoned without bail. They were charged under subsection 4(1)(c) of the Sedition Act 1948 for posting seditious material through the offensive greeting which carries fine maximum fine of RM5,000 which is punishable under subsection 4(1) of the same Act. The couple also was charged under Section 298A (1) (a) of the Penal Code for creating 'enmity between different groups of religion or races. In April 2016, as Alvin Tan (currently seeking asylum in the United States). (The Star, 2018)

The message is particularly dangerous which are meant to hurt a specific group of races which could establish a broad consensus for large-scale harmful actions among the races. Therefore, the spread of such statement invites racial hatred that continues to elicit violence. Thus Vivian Lee was found guilty of sedition and jailed six months over 'bak kut teh' Ramadan photo. However, Alvin Tan failed to attend the hearing and is believed to have fled to the United States to avoid facing trial. Therefore, Vivian Lee appealed against her conviction and sentence. The High Court dismissed the appeals. The learned Judge found that Vivian and Alvin Tan had a common intention to publish the picture, and that Vivian was a willing participant. Although no one saw Alvin or Vivian posting the picture, the learned Judge also made an inference from the evidence showing that the picture was kept in Alvin's notebook and the Facebook page was registered in the name of Alvin and Vivian (The Star, 2018). This goes to show without proper law in place like the Sedition Act the situation may be out of hand and the likelihood of abuse by the so-called freedom fighter would persist to no end.

Freedom of speech and expression can also be restricted based on the ground to protect the morality through laws like, Lotteries Act 1952, Indecent Advertisements Act 1953, Malaysian Communications and Multimedia Act 1998 and Perbadanan Kemajuan Filem Nasional Malaysia Act 1981.

Under the Films (Censorship) Act 1953 (FCA), the government can control film within Malaysia through the Film Censorship Board which has the power to censor obscene and violent films. The FCA is a statute that prohibit speech, in film or otherwise, that causes the incitement of racial or religious hatred. It carries specific limits to the speech that have the possibility of inciting hatred based on religious or racial grounds. For example, Lena Hendry, was charged under the FCA in September 2013 for screening No Fire Zone: The Killing Fields of Sri Lanka, a documentary about the Sri Lankan armed conflict. The prosecution imposed a higher penalty under Section 6(1) (b) of the Film Censorship Act 2002, which carries a jail term of up to three years or a fine of up to RM30, 000 or both if convicted. The initial sentence of a fine of RM10, 000 still stand (International Centre for Non-profit Law, Malaysia, 2020).

With the abolishment of the Anti-Fake News Act 2018, the government has shifted its policy on tackling fake news and disinformation to Section 233 of the Communications and

Multimedia Act 1998 and Section 505(b) of the Penal Code (statement conducive to public mischief). In January 2020, the police and the Malaysian Communications and Multimedia Commission made four arrests that spread fake news about the coronavirus on Facebook page and Twitter which can instil panic in the public. The case is being investigated under Section 233 of the Communications and Multimedia Act 1998 (The Star, October,2019)

### ***Parliamentary Privileges and Freedom of Speech***

This privilege is meant to allow the Houses of Parliament to carry out their duties as effectively as possible, without any intervention by others or misuse of power from those within Parliament. In other terms, privileges are designed to protect Members from harassment or intimidation of legal actions in the performance of their roles as Members of Parliament.

The privilege (s) can only be invoked where there is a 'parliamentary proceeding' going on. This phrase would cover questions in the House, remarks in committee, and statements during any parliamentary business in the House. Thus, the privilege of freedom of speech and debate can be open in the parliament except relating to seditious speech made during parliamentary proceedings.

Section 3 of the House of Parliament (Privileges and Powers) Act 1952 prescribed the freedom of speech and debate shall not be questioned in any court or tribunal out of the House. This Act has given the House's powers and privileges vide section 32 (1), which has two separate limbs. First, the House, enjoys and exercises the powers relating to the privileges as are held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom. Second, the House holds such privileges and powers as are from time to time defined by any law of Malaysia but not exceeding those at the commencement of such law held, enjoyed and exercised in the Commons House aforesaid. In other words, the house held the same rights as those enjoyed by the House of Common in UK and secondly, rights as stipulated by the law in Malaysia.

But what are the limits of the privilege then? The ancient right of parliamentary privilege gives MPs and peers unrestricted free speech in their debating chambers - this enables them to name names without any fear of being dragged before the courts and sued for defamation. It is, potentially, a powerful tool for righting wrongs, but, as the saying goes, with great power, comes great responsibility (BBC,2018)

Should this right be curtailed? The point is parliamentary privilege is used to set aside the rulings of a court and name a name that it had ordered, should not be disclosed in injunction. There have been legal challenges to the use of parliamentary privilege in the European Court of Human Rights, but the ECHR has thus far always upheld the right of freedom of speech within a parliament; but there is also the implication that if a parliament fails to police the actions of members effectively, then the court might begin to look at this differently. (BBC, 2018). This include spreading of faked news on coronavirus pandemic.

The delicate setup was already seen in the case of Abdul Rahman Talib v PR Seenivasagam. In this case the plaintiff was an advocate and solicitor and Minister for Health in the Government of the Federation of msia and defendant was an advocate and solicitor and a Member of the House of Representatives. During the proceeding of the House of



Representatives, the defendant moved for an adjournment to discuss the allegation that the plaintiff was involved in corrupt practice.

Plaintiff denied the allegation and challenged the defendant to repeat his statement outside Parliament. The defendant took up the challenge and repeated the allegation in a public meeting organised by the plaintiff. Plaintiff's claim was for damages for libel and slander for the statement made by the defendant at the Chinese Assembly Hall in Kuala Lumpur. What should be noted here is that the plaintiff could not have taken any civil action against the defendant for the statement made in the proceeding of Parliament. The action was taken for the statement made in the Chinese Assembly Hall (Shad Saleem Faruqi, 1992)

To prevent further blunders, it must be borne in mind, immunities of members of parliament from legal actions do not necessarily mean that they are immune from disciplinary action. Parliament as the keeper of its own house, reserves to itself the power to punish its members. It should also be noted the privileges are not absolute. (Shad Saleem Faruqi, 1992). What can be done alternatively is by adopting the principle of limited government and the like by implication, to infer rejection towards public impropriety, the likelihood of which, parliamentary immunity would cease to have effect.

Freedom of speech can also be excessive during courts proceeding in which court can issue contempt of court. Contempt of court is also being mentioned as one of the restrictions to Article 10(2)(a). Contempt of court can be defined as any act done or writing published that tends to bring the authority and administration of law into disrespect or interferes with litigation. Contempt is very crucial as stated by Salmon LJ, it is to secure public rights by ensuring that judicial procedure is not obstructed or hindered by irresponsible speech. This right to prosecute for what is wrong known as 'contempt of justice' or 'sui generis' is a long-celebrated principle adopted by the court (D. G. T. Williams, 1969). By looking at the definition itself, it is clear and wide enough to even cover cases of 'electronic speech' which mostly happened nowadays. Further contempt of court in Malaysia has been derived from several laws. For instance, in Article 126 of the Federal Constitution, only Federal Court, Court of Appeal and High Court of Malaysia have the power to punish any contempt of itself. Other than that, Section 13 of Court of Judicature Act, Judicial Proceedings (Regulations of Reports) Act 1962 as well as Subordinate Court Act 1948 also mentioned of contempt of court.

However, problem arises if matters being litigated are matters that the public have legitimate interest. Should public discussion on matters of public interest be suspended just because there is a pending case? In *Ex parte Bread Manufacturers Ltd*, Jordan CJ held it is well settled that a "person cannot be prevented by process of contempt to continue to discuss publicly a matter which may fairly be regarded as one of public interest, by reason merely of the fact that the matter in question become the subject of litigation, or that person whose conduct is being publicly criticised has become a party to litigation either as plaintiff or as defendant and whether in relation to the matter which is under discussion or with respect to some other matter. The need for contempt of court is undeniably necessary but at the same time with due respect and diplomacy public that has legitimate right should be allowed to discuss them for public interest reason. Striking the right balance even though hard would be much celebrated. As long as the spirit of accommodation and strictness exist this would no doubt led to strong and enduring judiciary.

### ***Defamation***

Defamation is also one of the elements that has been used to restrict freedom of speech in Malaysia. Defamation can be referred as false statement made about someone or an organization which can bring damage to their reputation. In other words, defamation is described as the act of publishing a statement that reflects on the integrity of an individual and tends to lower him in the general estimation of right-thinking members of society (Masum, A. (2020).

Under common law there are two types of defamation which are libel and slander (Sir John Laws, 2008) Libel can be defined as defamation in permanent form such as written words in articles, newspapers or even social medias such as Facebook posts and WhatsApp messages. Saul Levmore, (2010) Meanwhile slander is defamation in temporary form such as spoken words given by someone (Salleh Buang, 2020).

In Malaysia, The Defamation Act 1957 is derived from the constitutionally permissible restriction on free speech. Thus, it is important to note that Malaysia contemplates both civil and criminal defamation. Nevertheless, civil defamation has been mentioned by Defamation Act 1957. Under this act, it is stated that defamation is established if the plaintiff is able to show the defamatory statement was done with malicious intention. Furthermore, plaintiff also need to show that the statement is not fair or justifiable. On the other hand, criminal defamation has been provided in Section 499 of The Penal Code, stating that defamation is established once it is shown that the words either spoken or intended to be read or sign, or by visible representations, make or publish any imputation concerning any person, intending to harm, or knowing or having reason to believe that such imputation will harm such person. Apart from that, in Section 502 of the Penal Code mentioned matters regarding selling and offering any printed or engraved defamatory matters.

The Defamation Act 1957 however was drafted and passed at the time when the print and post were the technology of the day. It remained unchanged since its enactment despite technological advances in communication, maturing standard in journalism and evolving societal values (Masum, A. (2020). Looking at the problems happening around us nowadays, it is necessary to consider issues regarding cyber defamation. This is because, Internet revolutionized communications has a potential to dramatically spike the number of defamation cases. In most recent cyber defamation case, the High Court has granted damages between RM 50,000 to RM 100,000 publishing defamatory elements originated from email, Facebook or any other social media platform (The Star, Oct 2011).

In a similar vein, despite the acquittal of Paulsen and S. Arutchelvan, their action to tarnish the image of Islam was still seen as offensive, defamatory and harmful to the public order. Mr. Paulsen was charged with sedition in February 2015 for criticizing the Malaysian Islamic Department on the Syariah penalty given to Syariah offenders, in his Twitter account. The charge, under Section 4(1)(c) of the Sedition Act, provides for a maximum fine of RM5,000 or a maximum jail term of three years, or both, for first-time offenders. S. Arutchelvan was also charge under Section 233(1)(a) of the Communications and Multimedia Act (CMA) 1998 for allegedly posting a statement on Facebook with the intention to injure the feelings of others. The CMA offence is punishable with a maximum fine of RM50,000 or a maximum one-year jail term or both. But both Paulsen and S. Arutchelvan were acquitted by a Sessions Court of committing an offence for sedition. (Hafiz Yatim, 2019).

The irony of the court's judgement is that instead of appreciating the Syariah crime within the right context of Islamic law the court acquitted the offenders base on different framework, context and circumstances.

This kind of freedom indeed is not welcomed because as much as power needs to be controlled, freedom likewise especially when touching sensitive religious issues. Those freedom can only be exercised in as long as it does not stir public disorder and unrest the embodiment of which is deeply engrained in art 11(5).

In fact, if something undesirable still slip through the net, a number of penal provisions relating to obscene publication, wounding religious feeling and making statement conducive to public mischief chief are available to impose post-event penalties on offenders. In any case there are many established grounds of law that may be used to do so.

### ***Incitement to Commit Any Offence***

Under Article 10(2)(a) of the Federal Constitution too, justify the restriction towards freedom of speech and expression to cause incitement to commit any offence. This restriction can be explained by looking at the multiracial composition of the Malaysian population. The racial riots on 13 May 1969 were resulted from this that further led to the amendment of the 1948 Sedition Act and a broader definition of the term "seditious tendencies".

There are several types of incitement to commit any offence and one of it regarding obscenity. In Malaysia there are at least three legislations which deal with obscene material, namely, the Penal Code, the Printing Presses and Publications Act 1984 and the Films (Censorship) Act 1952. These laws are targeted at dissemination of specific subject matter, the contents of which are considered to be obscene, immoral or against public interest. For example, Section 292 of the Penal Code makes it an offence to sell, let for hire, distribute, publicly exhibit or in any manner put into circulation any obscene book, pamphlet, paper, drawing, painting, representation or figure or any other obscene object. It is also an offence to import or to advertise the availability of such material. Additional penalties are imposed where such material is sold, let for hire, distributed or circulated to any person under the age of twenty.

Section 298A also mentioned about offences such as causing disharmony and disunity on grounds of religion to restrict freedom of speech. However, considering some issues happening nowadays, it is important to acknowledge the breadth of Penal Code to combat the problem. It would appear that Internet web sites, bulletins board or e-mails sent containing information or material considered by the authority as inciting others to commit any offence be prosecuted. Thus, the above provision of the Penal Code would appear sufficiently broad to cover attempt to create hostility and disunity as well as transmission of obscene material over the Internet or cyberspace.

### ***Sensitive Matters***

In addition to the restrictions in Article 10(2)(a), Article 10(4) of the Federal Constitution also stated that Parliament may pass laws prohibiting the questioning of four politically sensitive matters. Those matters are status of the Malay language, special positions of the Malays and the natives of Sabah and Sarawak and prerogatives of the Malay Sultans and the Ruling Chiefs of Negeri Sembilan and Part III.



There are several legislations that deal with this type of restriction. One of it is, the Sedition Act 1948. Under this act, one of the sections mentioned that “any act, speech, words, publication or any other thing” will be deemed seditious if it causes the following, firstly, brings into hatred or contempt or to stir disaffection against any ruler or against any government or administration of justice or the Yang di-Pertuan Agong or a Ruler of any state and secondly, creates feelings of ill-will and hostility between races or classes of the population to question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions relating to the national language or special rights of the ethnic Malays and natives of Sabah and Sarawak or the powers relating to the ruling chiefs of Negeri Sembilan (Faruqi, S. S, 2019).

Other than that, under Printing Presses and Publication Act 1984, it is provided that all printing companies in Malaysia to have a mandatory printing license that prohibit them from publishing matters which are sensitive according to Article 10(4) of the Federal Constitution. The license must be valid for 12 months or less and which can be revoked by the Ministry at any time. For example, in 1987, newspapers like The Star, Sin Chew Jit Poh and Watan had their licenses revoked under the law for committing such offence (Era consumer, 2005).

Despite the guaranteed freedom of speech and expression in Malaysia in the Federal Constitution, Malaysia is the country that has many races and religions. The demographics of Malaysia are represented by the multiple ethnic groups that exist in the country, the majority of which are Muslim Malay at the rate of 61.3% while the remaining population, 19.8% Buddhist, 9.2% Christian, 6.3% Hindu, 1.3% adherents Chinese traditional religion and 0.4% other religion (MCMC, 2015). Disunity and clashes can easily ignite if not handle meticulously. The Malaysian government has put in a great deal of effort to maintain the harmony, acknowledging the differences of races and religion of its citizen. However, as other country, Malaysia also face the races and religious conflicts.

It is not free from being exploited. Some still choose to politicise the race and religious issues in order to gain support. All these negative feelings may threaten the harmonious relationship between people of diverse culture. Even though some opined that Malaysians are ready for more freedom, yet others feel it is too sensitive to indulge. Besides, religion is still regarded as sensitive matters that cannot be questioned.

Art 10 can be seen in Art 11 in how freedom of speech were used to spark religious tension. Article 11 has already stated that every person has the right to profess and practice their own religion. However, this freedom is not absolute. For the freedom of religion, there are two restrictions which are, (1) the propagation of any religious beliefs and doctrine among persons professing religion of Islam may be controlled or restricted by the individual states in Malaysia and (2) the freedom to profess and practice one’s religion must not result in an act contrary to any general law relating to public order, public health or morality.

Example of religious tensions are many. Inter alia the sensitive issues instigated by the Herald Tribune, a Christian publisher, who used the word of ‘Allah’ in translating the English article into Bahasa Melayu. The paper was confiscated because the word ‘Allah’ was misleadingly translated from the word ‘God’. At the Court of Appeal, it was held that the minister’s decision was right because it is not appropriate translation for the word ‘God’. The disquiet can be seen

when the decision was taken out of context and seen as religious intolerance (Times, 2014). The Islamic conception of Allah refers to the one true God that has no partners or sons. Hence, to translate the word of God in Christianity is absolutely intolerable.

In allowing the appeal, Justice Datuk Seri Mohamed Apandi Ali, who read out the summary of the judgement said that the Home Minister's decision to disallow the Herald using the word Allah in Bahasa Malaysia is correct and exercised within his power. He also said, in their common finding, it is not an integral part of Christian faith and practice to use the word of Allah. Hence, the judges cannot find any reason why the publisher was so urged to use the word in their weekly publication and if it was allowed then it will inevitably cause confusion among the community. The Court of Appeal also stated the High Court only considered the manner in which the Home Minister comes to the decision but not the merit behind it. When the matter went on appeal to Federal Court on June 23, 2014, the Federal Court of Malaysia again turned down the appeal by Titular to hear a case challenging the country's prohibition against the use of the word "Allah" by non-Muslims to refer to God.

What is invigorating in this case is that the Court of Appeal and the Federal court had made a good verdict in overturning the High Court's ruling and in all events more just and apt because helping the government maintain public order was no longer an option but a necessity. It should be noted Islam are dear to the hearts of the Muslims, the usage of words "Allah" to describe the God in Christian publication were extremely offensive. If the government turned blind eyes on these issues bigger religious tension between the Muslims and the Christians will precede. Indeed, the tension caused by freedom of speech irresponsibly and excessively used.

### ***Special Powers Legislation***

The right to freedom of speech also can be further explained by the special legislations mentioned under Articles 149 and 150 of the Federal Constitution relating to subversion and emergency. Article 149 authorizes legislative action design to stop or to prevent subversion, organized violence and crimes prejudicial to public. Generally, the Internal Security Act 1960 was derived from this provision, however this act then was repealed on 2012 and replaced by other subversive laws. Some of the subversive laws are, Security Offences (Special Measures) Act 2012, Prevention of Crime Act 2015 and Prevention of Terrorism Act 2015. On the other hand, Article 150 permits any legislative action required by reason of emergency.

There is no such infringement of human rights when it comes to subversive law. This is because, under these laws, for example, Security Offences (Special Measures) Act 2015, a police officer may, without warrant, arrest and detain any detainee for 24 hours and extend the period of detention to not more than 28 days to facilitate investigations. According to former Inspector General Police, Tan Sri Musa Hassan, SOSMA also played a crucial role in safeguarding the sovereignty of the Yang di-Pertuan Agong, Malay rulers, as well as the interests of the people that might be threatened, posing the threat of racial and religious riots (The Star, 28 Jul 2018). Thus, it is undeniably important, sound preventive laws is substantial in preventing freedom of speech being used rampantly and irresponsibly.

### ***Hate Speech***

Malaysians do enjoy the right to freedom of speech, but it does not extend to hate speech. Malaysia is made up of many racial and religious groups whose fundamental rights have been protected by and enshrined in the Federal Constitution. The use of hate speech in our

multicultural country has increased with the advent of social media (Robert F. Martin (1981). This has resulted in hateful and violent acts being committed which threaten peace and harmony in the country (Murni Wan Mohd Nor, 2016) Hate speech is now openly voiced in the public's eye, especially via social media. It is like a ticking bomb waiting to blow off unless handled with mindfulness. Hate speech is commonly understood to describe types of expression that promote abuse, hostility or prejudice against other persons and groups, in particular by reference to their race, religious views, language, national origin or immigration status. Currently in Malaysia, there is no specific law addressing hate speech, but elements of it can be found under the Sedition Act 1948. This act helps to ensure that the citizen express their opinion and voice with cautions without causing harm or hurt to others (Murni Wan Mohd Nor, 2016).

To address hate sentiments among the people of Malaysia, government has embarked into great deal of effort to bring and preserve racial harmony, considering the many different races and religions. Among others, the establishment of private schools for Chinese and Indian students using their respective mother tongues as medium of instruction. Indeed, the expression of the government's commitment in acknowledging people's diversity. Meant to address the inequalities often misunderstood as biased between races.

It is undeniable hate speech stem from the free speech made without cognizance and limitations (Frederick M Lawrence, 2016). It needs to be controlled for otherwise it will be hard to maintain the unanimity (James Banks ,2010). Or else what happen in the episode of "Intelok" will repeat again. This book 'Intelok' had once caused controversy in Malaysia (Murni Wan, M.N. & Ratnawati Mohd, A, 2015). The book was made for a syllabus in high school, but, it stirred up anger among the Indians due to the word 'pariah' and 'black' to describe the Indians. Although the book has no intention to ridicule the Indians, it was still unacceptable. The novel was then removed and replaced by a more suitable one. All these events show how high these sentiments can transform into racism and hate speech the venom for peace and order.

Absence of restraint and accountability exacerbates the issue of hate speech, which may result in the indemnification of specific people, the deterioration of the social structure, as well as political instability that can endanger our nation. The sensitive nature of the Malaysians, the tensions that exists, the continued incidences of insensitive speech and acts occurring today merit a law on hate speech. As much as one should have the liberty to express his or her opinion, it should not be at the cost of abusing others and inciting people to hate (Murni Wan, M.N. & Ratnawati Mohd, A. (2015). Further to avoid the greater mess and tragedy, it is important we uphold the restriction provided in Article 10 of the Federal Constitution so that the overall solidity and harmony can be safeguarded and defended.

### **Conclusion**

As a conclusion, Malaysia is no exception when it comes to restricting speech. Federal Constitution gives Parliament the exclusive power to draw the balancing line to determine to what extent the right of freedom of speech can be bestowed under Article 10. The restraints are needed to curb the extensive hate speech and other hostilities. This is not surprising, as Malaysia is comprised of various distinct religious and cultural traditions. Despite racial differences we should focus on the similarities rather than incompatibilities. Respect, understanding and tolerance are the significant values espoused by all religions and should therefore be the utmost consideration when practicing free speech. In the pursuit of our rights

under freedom of speech and expression, most of us have forgotten that we are not living in isolation. There are many people around us that we should be mindful too especially during the time of the pandemic where uncertainty is lurking, the rights of all segment of people must be acknowledged. Stressing so much on individual needs will only contribute to a selfish, soulless society that is indifferent to the plight of others Hate speech has no value and will only lead to more injustices and crimes. Therefore, justice and responsibility in exercising freedom of speech is crucial to thwart the spread of hate speech. Once the words have been said, what remained in its wake are hurt, dissatisfaction and anger that will only fragmentize racial ties (Murni Wan, M.N. & Ratnawati Mohd, A, 2015). Legal restraints are pertinent to protect the nations sovereignty, be warned that it is indispensable and uncompromisable. Fostering it thus is essential in achieving the stability and tranquillity desired by all.

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