



CONTEMPORARY DEBATE ON FREEDOM OF SPEECH AND EXPRESSION CONCERNING FILM CENSORSHIP LAWS IN MALAYSIA

by

MD. ZAHIDUL ISLAM*

ABSTRACT

Freedom of speech is a vital element to humanity and for the foundation of a free society. The making and exhibition of films also falls under the free speech clause. Like other fundamental liberties, freedom of speech does not have any absolute form and it is related to the reputation of others like national security issues, public mental health and moral instincts. It is a contemporary debate that freedom of speech is restricted by censorship laws. The aim of this paper is to identify the relationship between freedom of speech and expression concerning censorship laws of Malaysia. It is a qualitative research. The information has been collected studying articles, books, newspapers and statutes. The restrictions on freedom of speech are acceptable for the interest of security of a state, public order and to establish friendly relationships with other foreign countries. In this case, censorship plays an important role to protect moral values, and law and order in a country.

Keywords: Film; Freedom; Speech; Expression; Laws; Malaysia;



INTRODUCTION

Freedom of speech and expression is a power or right to express one's opinions without censorship, restraint or legal penalty. It is a constitutional right as well as a fundamental right of citizens. It is fundamental to the existence of democracy and respect for human dignity. Although it is a constitutional right, it has been restricted in terms of national and international laws since early times when aristocratic rulers only allowed certain classes of citizens to express their opinions without fear and freedom of speech and expression was restricted. It was reserved for adult male citizens not for juveniles, women and resident aliens (Tedford, 2001). Similarly, the word 'censorship' denotes excision, hindrance, termination, regulation or controlling of an inefficient motive. It limits or prevents the free exchange of information (Steele, 1999). Censorship means act of changing or suppressing speech or writing that is considered subversive to the common phenomenon. In the past, most governments believed that their duty is to regulate the moral values of their people by the country's laws; but with the right of freedom of speech, censorship became objectionable.

The word 'censorship' should not be given limited meaning, that is, excisions on the ground of morality only, but should have a liberal meaning, that is, excision, stop, regulation, control (*Dacca Picture Palace Ltd. v. Pakistan*, 1966). "Censorship" is a controversial word that exists to some extent in all countries and it is considered of great



importance throughout the ages. However, the law and order situation is worse in some countries than in others. Historically, in most cases, the rulers tried to censor, ban or suppress different literary works, music and thoughts of people because those went against the interests of the rulers. This issue has become a part of law which is to be applied very seriously and cautiously. One of the grounds for censorship is obscenity which resulted in many creative works and thoughts of the people being censored or banned.

FREEDOM OF SPEECH: THE POSITION IN THE FEDERAL CONSTITUTION OF MALAYSIA

The right to freedom of speech and expression has been provided by the Federal Constitution of Malaysia. According to Article 10(1)(a) of the Federal Constitution of Malaysia, “Every citizen has the right to freedom of speech and expression.” However, Article 10(2)(a) states that the government may impose restrictions regarding freedom of speech and expression to protect (a) the security of the Federation or any part it; (b) the friendly relations with other countries; (c) public order; (d) morality; (e) privilege of the parliament; (f) contempt of court; (g) defamation; (h) incitement of an offense. The restrictions are also imposed by the court. In *Madhavan Nair v. Public Prosecutor* [1975] 1 LNS 94; [1975] 2 MLJ 264, it was held that: “Any condition is considered to be invalid, that is limiting the exercise of the fundamental right to freedom of speech included in the four corners of article 10 clause (2), (3), and (4) of the Federal Constitution.” In another case of *Lau Dak Kee v. Public Prosecutor* [1976] 1 LNS 54; [1976] 2 MLJ 229, Mohamed Azmi J said



“Article 10(1) of the Federal Constitution guarantees the rights to every citizen to freedom of speech, assembly and make associations. However, those rights are subjected to any law passed by Parliament.” So, this kind of censorship restricts the freedom of speech in the State.

Articles 149 and 150 of the Federal Constitution of Malaysia have imposed another form of restriction on freedom of speech and expression. Article 149 provides that if any Act of Parliament implies any action has been taken or threatened by any substantial body of persons whether inside or outside the federation, any provision of law that is designed to prevent such harmful action is valid.

Article 150 of the Federal Constitution of Malaysia provides power to the Yang di-Pertuan Agong for the proclamation of any emergency situation in order to prevent any circumstances that may endanger the security of Malaysia. Under this article and by the virtue of this law; even if Parliament is not in session, the Yang di-Pertuan Agong has the power to legislate the proclamation and Ordinance to enact laws.

Discussion of the other forms of freedom (for example freedom of association, freedom of assembly, freedom of religion) is also important for an overall visualization of the freedom of speech. Freedom of speech and expression cannot be sufficiently understood without comparing freedom of speech with the cross reference to other forms of freedom. It is discussed elaborately in the provisions of Articles 5, 9, 10 or 13 of the Federal Constitution. The Internal Security Act 1960 was derived from these provisions.

These other forms of freedom are also a part of freedom of speech and expression. Due to this fact, some scholars have stated that the right of freedom of speech and expression must be understood in the light of certain rights; mostly the rights to peaceful assembly and association. For example, public meetings are one of the frequent practices of influencing the public for any opinion on vast issues. However, under the Malaysian Federal Constitution, this is not the only right that can be seen from the perspective of freedom of speech and expression.

So, the meaning of freedom of speech is very comprehensive. It is not only limited to oral speech. Moreover, Article 10(2) can impose restrictions to protect the security of the federation, the friendly relations with other countries, public order, morality, privilege of Parliament, contempt of court, defamation and incitement of an offense. At this point, it appears that there is a censorship on freedom of speech and it is permitted by the Federal Constitution of Malaysia. For a better understanding, other forms of freedom as mentioned before are discussed below.

Other Related Freedoms

Freedom of speech and expression is also related to freedom of assembly, freedom of association, freedom of press, freedom of religion and freedom of information. Freedom of assembly is a way to express views or opinions. It has a plain connection with the notion of freedom of speech and expression. Based on the need of citizens, a citizen has the right to protest in a democratic way by freedom of assembly. In a democratic country an ordinary citizen can bring up matters to get the

consensus of others including members of Parliament. Article 10(1) (b) of Federal Constitution of Malaysia says, “all citizens have the right to assemble peaceably and without arms”. Moreover, according to article 10(2)(b), Parliament may impose restriction against freedom of assembly in order to protect the security of the Federation or any part, or public order. In *Cheah Beng Poh v. Public Prosecutor* [1983] 1 LNS 65; [1984] 2 MLJ 225 SC, the High Court issued a rule that police permission is required to arrange a public meeting or procession. This rule is obviously a restriction to freedom of assembly. So it is one kind of censorship to the citizen. Moreover, freedom of assembly has also been restricted by the Peaceful Assembly Act 2012. Under this Act, if any person attends a peaceful assembly who is under twenty-one years old, it shall be an offence. That means people do not have the right to join peaceful assembly, if he/she is under twenty-one years old. Therefore, it is one kind of censorship to that citizen who is under the age of twenty-one.

Like freedom of assembly, freedom of association is also connected to freedom of speech and expression. An individual is permitted to claim the right to form an association with a group of people in order to make his or her views known to the public under the Malaysian Federal Constitution. Article 10(1)(c) says that “all citizens have the right to form associations.” Article 10(1)(c) gives the right to form an association, but article 10(2)(c) imposes some restriction or censorship. Article 10(2)(c) says that “Parliament may by law impose on the right conferred by paragraph (c) of Clause (1), such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, or public order or morality.” Under this article it is easy to

understand that censorship also exists here. The government may impose restrictions or censorship by law to protect the security of any part of the state and to protect the public order or morality. In *Malaysian Bar & Anor v. Government of Malaysia* [1986] CLJ Rep 508; [1986] 2 MLJ 225, it was held that article 10(1)(c) does not give any right to any citizen to manage any association but just the right to form it. Therefore, restriction is also imposed in such circumstances.

Freedom of speech and expression is also connected to freedom of religion. Freedom of religion is an important part of free speech. Freedom of religion is a fundamental demand of the nature of human beings. To achieve the objectives of his life, a person is likely to require a belief, an authority or a power to guide him to the right path. From the very beginning of human civilization, humans realised the importance of freedom of religion that it should be safeguarded. Laws are also passed to guarantee their overall security in order to balance a society. Article 11(1) of the Federal Constitution of Malaysia also provides the right to freedom of religion. This article says a person has the right to practice and profess their religion. But article 12(4) of the Federal Constitution says that the religion of a person under the age of 18 shall be decided by their parents. In the case of *Teoh Eng Huat* [1990] 2 CLJ 11, the court held that a child who is under 18 must conform to the wishes of his or her parents. Therefore, the court declared that the conversion of a 17 year old Buddhist girl to Islam without her parents' consent was void. A similar approach was taken by the Federal Court in *Lina Joy Lwn Majlis Agama Islam Wilayah Persekutuan Dll* [2007] 3 CLJ 557; [2007] 4 MLJ 585 FC. In this case a Muslim born female was not allowed to leave Islam. Article

11(4) of the Federal Constitution also imposes restriction. It says State laws and Federal laws may censor or restrict the propagation of any religious faith among persons who are professing the religion of Islam. Most of the State legislatures have passed such laws.

Also, article 11(5) of the Federal Constitution says that the provision of freedom of religion under article 11, however, does not authorise any act contrary to any general law that relates to public order, public health or morality. Consequently, Parliament has the power to restrict religious conduct on the grounds of public health, order and morality. Also, in *Minister of Home Affairs, Malaysia v. Jamaluddin bin Othman* [1989] 1 CLJ Rep 105, it was held that the right to freedom of religion in Malaysia is subject to the provision in article 11(5). Therefore, it is deemed necessary to protect public order, health and morality with these type of restrictions.

Freedom of speech has a close proximity with freedom of information because of how can a person give his/her opinion or views without any information. According to the article 10(1)(a) of the Federal Constitution of Malaysia “Every citizen has the right to freedom of speech and expression” although article 10(2), (3) and (4) has imposed some restrictions. However, article 19(1) and (2) of the International Covenant on Civil and Political Right (ICCPR) provide rights to freedom of information. On the other hand, article 19(3) of the ICCPR has imposed restrictions to protect national security or public order or public health or public morality. So, freedom of information is also restricted or censored by laws.

Similarly, freedom of speech is also restricted by other laws, but these are legally justifiable on grounds of security in article 10(2) of the Federal Constitution of Malaysia such as the Official Secrets Act 1972, Internal Security Act 1960, Printing Presses and Publication Act 1984, the Telecommunication Act 1950, Public Order (Preservation) Act 1958, Protected Areas and Protected Places Act 1959 and Sedition Act 1948. These Acts are discussed below.

Freedom of Speech Restricted by Other Laws

Freedom of speech has been restricted by the Official Secrets (Amendment) Act 1972. Section 3 of this Act has imposed restrictions to collect, obtain, publish or communicate information to other people. If any person does anything which is harmful to the safety of Malaysia, they shall be guilty of an offence under this Act. For example, if any person enters any prohibited place or makes any document or disclosure of any secret official code to others which is harmful to the State or neighboring State, they shall be punished under this Act. For this reason, it is clear that the Official Secret Act is a barrier to free speech.

At the same time, freedom of speech is also restricted by the Printing Presses and the Publication Act 1984. Under this Act, if any person prints, imports, publishes, sells, distributes or offers to sell, publish and distribute any document which is obscene, against public decency or which is likely to lead to a breach of the peace, the person shall be guilty of an offence. Any authorised officer has the power of seizure or detaining a printing press or publication under this Act. So, it is clear that freedom of speech has also been restricted by this Act.

Freedom of speech has also been restricted by the Sedition Act. According to this Act “any person who prints, publishes, sells even give offers for sale, distributes or reproduces any seditious publication; or imports any seditious publication shall be guilty of an offence.” The Sedition Act also states that a seditious tendency is a tendency (a) to bring into hatred or contempt or to excite disaffection against any Ruler or against any government; (b) to excite the subjects of any Ruler or the inhabitants of any territory governed by any Government to attempt to procure in the territory of the Ruler or governed by the Government, the alteration, otherwise than by lawful means, of any matter as by law established; (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Malaysia or in any State; (d) to raise discontent or dissatisfaction among 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; or (e) to promote feelings of ill-will and hostility between different races or classes of the population of Malaysia; (f) to question any matter, right, status, position, privilege, sovereignty or prerogative, established or protected by the provision of part III (Citizenship) of the Federal Constitution or Article 152, (National Language), 153 (Reservation of quotas of public service, permits, etc., for Malays etc.), or 181 (Rulers sovereignty of the Federal Constitution). The Malaysia Bar Council organised a rally against the Sedition Act. The then President, Christopher Leong, of the Bar Council said, “it is clear that the Act is not used for the purpose of maintaining security following the recent sedition blitz by the government. The Sedition Act is used to clamp down on those with differing views (from the government).”

Azmi Sharom, law lecturer of University Malaya was charged under the Sedition Act on 2nd September of 2015. He commented in an article titled “Take Perak crisis route for speedy end to Selangor impasse, Pakatan told” that was published in a news portal. Over 30 politicians, government critics, and activists were also charged under this Act.

From the above discussion, it is clear that freedom of speech and expression is restricted under the Malaysian Federal Constitution. It is not only restricted by the Federal Constitution but also restricted by some national laws. This restriction was imposed to protect the security of the state, public health or morality.

FILM CENSORSHIP LAWS IN MALAYSIA

As mentioned previously, the film censorship laws in Malaysia can be found in two main regulations which are (a) Film Censorship Act 2002 and (b) Film Censorship Guideline of 2010.

Film Censorship Act 2002:

There are eight (8) different parts provided in this Act. Each of the parts specifically covers different aspects of film censorship. The preliminary matters (sections 1 to 3) can be found in Part I of the said Act. The relevant sections relating to the Malaysian Film Censorship Board and its establishment are provided in Part II of the said Act. Matters concerning alterations to the films, the censorship certificates’ issuances, the control and publicity for film materials can be traced in Part III of the Act. Part IV of the Act can be referred to for the details on the Appeal Committee and provides the procedure for an appeal against the decision of the

Malaysian Film Censorship Board. Part V prescribes the authority of the Home Minister in relation to directions, exemptions, regulations and prohibitions as permitted by the Act. Matters in relation to enforcement such as, powers to investigate, search, seize, arrest and the relevant penalties which are connected to breach of the Act can be traced in Part VI. Miscellaneous matters such as prosecution of offences for breach of censorship are provided in Part VII. Part VIII provides the details on repeals and transitions of the Act.

Film Censorship Guidelines of 2010

It is a set of guidelines (issued by the Prime Minister's Department) which are used by the Malaysian Film Censorship Board in making censorship decisions. The film censorship guidelines discuss the general policy, general principles, evaluation policy and decision of the film censorship board. It states that the general principle of film censorship is the protection of Malaysian society from any possible negative and immoral influences from watching films; prevention against exhibition of anti-government films or offensive films towards any Islamic or ASEAN countries; prevention against exhibition of films which insult any religion, false teaching and deviations; prevention against exhibition of films which disturb racial harmony; promotion of noble values of Malaysian society and not against them; prevention against misuse of films for destroying the reputation of individuals or organisations. It tries to protect society and the younger generation from negative influence. Four main aspects have been discussed by the film censorship guidelines

and members of the film censorship board will examine films in light of these four aspects which are provided as follows:

Security and Public Order: Security and public order are important concerns to film censors. Films created with themes related to security and public order are not prohibited. However, the storyline of those films are under attention of the censorship board so that no film can create any type of controversy and doubt in society. The subject matter of films that goes against the principles of the Federal Constitution, violence and anarchy related themes that affect the country's laws, unlawful comments used in film that indicate dishonor to the ruling government or directed to any foreign government are prohibited. Unlawful comment against the government is prohibited, but the guideline does not define it further. Therefore, there may be misuse of this guideline.

Similarly, any kind of mocking comments towards a leader, those of which may create hazards among the people or any slanderous lyrics or provocative dialogues that may threaten the safety, public order and national security are also not appreciated by the censorship board. The wrongdoings which are shown in movies and may create the urge to imitate are not entertained by the censorship board. Moreover the films that are related to victory over justice and truth, extreme violation of traffic laws, showing of criminal offences as profitable, lameness of legal authorities, any type of activities that may cause serious damage or death, illegal use of weapons, close up images of crimes or accidents, torturing scenes of humans or animals and abuse of drugs are not accepted by the censorship board because the society, specially the young generation can

be affected by these types of scenes. The protection of security and public order is important for a democratic country like Malaysia.

Religion: Religion is a sensitive and important part of the society. Any threat to any religion can destroy social peace. Films that contain religious themes need to be given attention and be scrutinized so that they do not create any controversy and doubt among the general public. A lesson against God and Religion, criticism of any religion misinterpretation of Jihad should not be contained in any film's storylines. Films that are related to the Islamic religion need to be scrutinized in such a way so that they do not create any controversy and doubt in a multicultural nation. These include any doubtful question about the purity of Islam, any type of comments that go against Islam, controversial dialogues that conflict with a Muslim scholar's thought, myths or superstition in Islam. Improper historical information about Islam, the writing of the Qur'anic verses in a language other than Arabic, misinterpreting hadiths (sayings of the Prophet Muhammad), *ijmak* (general opinions) and *qias* (perceptions); conflicting opinion about Shafie, Hanafi, Maliki and Hambali and the beliefs of the Ahli Sunnah Wal Jamaah; dishonoring any religious leaders especially the muftis (jurors); the use of any Islamic issue that creates misconception about religion, any character that portrays a Muslim monk performing worship in a temple or church or conducting sinful activities, suicidal issues are strictly prohibited. The films, *Noor Islam* (Eponym) (1960) and *Rumah Itu Duniaku* (Home Sweet Home) (1964), were banned on religious grounds (WM, 2009).

Moreover, the scenes and dialogue with polytheistic elements that touch on beliefs need to be examined carefully so that they do not give rise to controversy and doubt among the public. Regarding the character of the film, there are also some obligations such as, a teacher as a character of a certain school of thought, practice or method who claims to have received a divine message, claims to hold the key to the door to heaven or the stature of a prophet or an angel will not be accepted. Harsh recitation of Quran, evil places that pave the way for free interaction between opposite sexes, misuse of verses of the Qur'an to attract a crowd of people should not be found in a film. Manipulation of any beliefs of Islam, seeking help from any object or person other than Allah, showing illusions or black magic, showing of any spiritual power also fall under the censorship guidelines. The purpose of this provision is to keep harmony between different religions. A controversial film can destroy social peace. The best example is "*Innocence of Muslims*."

Socio-cultural: There are also some socio-cultural issues that are not permitted. However, the matters set out below need to be given attention and scrutiny so that they do not create any controversy and doubt among the general public: Degradation of the sovereignty of the Malay rulers, governors and national issues, uncertainty of lifestyle that may lead the destruction of noble values of a society, scenes and dialogues with sexuality, display of full nudity of the human body and excessive violence; horror movie's superstitious worship, horrifying and shocking circumstances, mocking of any culture of a country, films and dialogue with a negative perception on cruelty, scenes of oppression of a race or society, extreme scenes with action, sex scenes between a man

and a woman; homosexual and unnatural sex scenes; indecent dresses, revealed or close up scenes of secret body parts, nudity, kissing scenes that arouse sexuality, erotic sounds; gang rape scenes should all be avoided in making of films. The film, *Durjana (Evil)*, was banned on the ground of being contrary to cultural values in 1960 (WM, 2009).

In addition, films that show children smoking, drinking alcohol or taking drugs; content casting a poor reflection on the culture and arts of the nation are included. A local film that is based on legends, myths, oral tales and Malay folk tales are allowed as long as they do not glorify or deify matters contrary to the Islamic faith.

Decorum and Morality: The issues of decorum and morality are recommended as long as it follows the following characteristics: Films in which the actors wear revealing clothes exposing much of their bodies; scenes that promote and glorify a character committing a wicked deed or the wicked deed itself; portrayal of artistic skills such as dancing, theatre, music, visual arts and fashion that are deemed to be disrespectful and in conflict with the artistic values of the Malaysian society; derision and mocking of the lives of the disabled or the marginalized, uncivil, obscene language, code-switching, hate-filled utterances and misspelt words; code-switching that is consistent with the storyline is allowed on condition that the subtitles in Malay are correct and accurate; disrespectful or extreme behavior towards parents, senior citizens, women, children and the disabled should not be shown in a film. For example, *Akademi Seni*, was banned on the ground of being contrary to moral values in 1988 (WM, 2009).

In summary any film containing violence, horrifying, sexual elements and deviant cultures will be immediately rejected. There are some noble values that may improve the quality of a film. Examples of noble values are: belief in God, mutual respect, love, kindness, independence, courtesy, justice, freedom, courage, physical and mental wholesomeness, honesty, patience, a happy family, diligence, cooperation, moderation, gratitude, rationality, patriotism, environmental conservation and so on.

Moreover, certain words in the film censorship guidelines are discouraged from being used in films (for example: Malay words - Puki Mak, Anak haram, Haram jadah, Butuh, Anak, sundal, Celaka, Mampus, Perempuan jalang, Betina jalang, Kapala bapak, Kafir. English words - Fuck, Fucker, Mother fucker, Asshole, Bloody ass, Hand job, Blow job, Whore, Son of a bitch, Bastard and Jerk off.)

FILM PRACTITIONERS' OPINION REGARDING FREEDOM OF SPEECH AND EXPRESSION

The constitution of Malaysia protects freedom of expression. Restrictions imposed upon film productions, for instance through regulations that provides the dos and don'ts and cutting of scenes in films before being allowed to be exhibited in cinemas may be regarded as contrary to freedom of speech. Some of the Malaysian interviewees raised concerns about impingement on freedom of speech and expression. However, members of the Film Censorship Board opine that the Film Censorship Board does not infringe upon freedom of speech and expression. Abdul Ghani Bin Ibrahim, Khairiah Abdul Majid and Inau Edin Nom, members

of the Film Censorship Board are of the view that actors and actresses have the freedom to exercise their creativity within the law to express themselves in films. For instance, to convey the idea that a couple has a sexual relationship could be shown by depicting a couple holding hands and moving toward a bedroom and there is no need to show the actual sexual act.

A film director, Dr. Mahadi J Murat, shares the same view. For him film censorship is necessary in any community since films have to reflect the culture of a society. A film could educate the society through the art of cinema and to entertain. For him it is not necessary to show a naked scene in order to show a sexual act. The scene could be conveyed creatively.

However, the view of Dr. Mahadi J Murat is not shared by every other film director. Film directors, Amir Muhammad and Amirul Fadhli, feel that film censorship is a barrier and hinder them from expressing their films freely.

CONCLUSION

Freedom of speech has been guaranteed by the Federal Constitution of Malaysia. At the same time, it has been restricted by the Constitution and other laws in the interest of the people. The restriction on freedom of speech is acceptable in the interest of security of the State, public order or morally, friendly relations with foreign countries. In this case, censorship law is playing an important role to protect public health or morality. According to the Federal Constitution and other laws,



ensorship law is not a barrier to freedom of speech. It is working as a mechanism to protect our society.

*Assistant Professor, Ahmad Ibrahim Kulliyah of Laws, International Islamic University Malaysia, 53100 Jalan Gombak Kuala Lumpur, Malaysia. Email: zahidul@iium.edu.my.

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Biography

Dr. Md. Zahidul Islam has completed his PhD at the Ahmad Ibrahim Kulliyah (Faculty of Law), International Islamic University Malaysia (IIUM). He received his legal education in Bangladesh and Malaysia. He has achieved valuable experience in research work. Based on research evaluations, he was honored with the IIUM Postgraduate Niche Area Scholarship (2013/2014) and President Scholarship (2014/2015). The author has written articles on issues on Human Rights law and media law in local and international journals. He has also attended several local and international Conferences. Currently, He is working as an assistant professor at the Civil Law Department, Ahmad Ibrahim Kulliyah (Faculty of Law) (AIKOL), International Islamic University Malaysia (IIUM). He can be contacted at: zahidul@iium.edu.my