

Media Freedom in Malaysia: A Position Paper

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Abstract

This brief paper discusses current issues and prospects for media freedom in Malaysia. The author argues that media freedom is circumscribed through various laws and regulations: this makes Malaysia journalists to be cautious and they often practice self - censorship. The author also feels that NGOs and SUHAKAM have not done much to protect and uphold media freedom in Malaysia.

Introduction

At the start of this millennium, we seem to be moving inexorably towards a world of relativity, where there is no such thing as an absolute. There is no absolute freedom, neither is authoritarianism absolute (thanks to the collapse of communism at the end of the last millennium). This sense of relativity should be kept in perspective when we discuss freedom of the media in Malaysia.

While freedom of expression is upheld as a fundamental freedom in most democracies, the ruling (federal) government has asserted that media should emphasise values that aim to preserve the stability of the nation, religion, culture, race, family and community. The federal government (Barisan Nasional - BN) highlights that Malaysia must be fully developed in terms of national unity and social cohesion; any form of initiatives that disrupt the economic system and political stability, especially linked to freedom of expression must be resisted.

However, this view of the role of media as merely allies in the development process has come under close and intense scrutiny after the dismal performance of the BN in the March 2008 elections. At least seven bloggers (most of them in opposition parties) were elected to Parliament. Additionally, reports and studies have shown that new and

alternate media played a significant part in influencing voters' decisions, especially the new and young voters. They have also begun challenging the erstwhile supreme power of the BN-controlled federal government in matters related to oil revenues, environmental issues and appointment of state government officials.

Hence, opposition parties (that now control four states and have a much stronger voice in the federal parliament) have become emboldened in their criticism of federal policies and practices, bonded in an alliance known as the Pakatan Rakyat (PR). Furthermore, human rights activists and NGOs have become more vocal and strident, forcing the federal government to resort to the use of preventive laws in order to curb the frequent demonstrations and rallies. Sensing that the mood of the electorate has changed and in preparation for the next general elections, the BN government is contemplating a review of these laws and has announced that some of them may be repealed.

Another new political dimension that will have implications for the media scene in Malaysia is the changing nature of federal-state relations. BA (Barisan Alternatif - Alternative Front) component parties in the states of Penang, Kedah, Kelantan and Selangor have begun initiating reforms promised under the slogan of Reformasi that became the rallying cry for the opposition parties in the 2008 elections.

In this brief position paper, I shall focus on those fundamental rights that impinge upon media freedom, how restrictive laws have affected media freedom, what is the role of SUHAKAM in protecting these freedoms, and what is the way forward.

Fundamental Rights Guaranteeing Media Freedom

Freedom of the individual is part of the fundamental liberties granted to any citizen in most democratic countries in all parts of the world. Among these are: freedom to own property, freedom from slavery, freedom of assembly, freedom of religion, freedom of speech, freedom to hold opinions and freedom of movement.

However, these are not absolute freedoms and there are restrictions imposed by many countries that describe themselves as democratic countries to curtail these freedoms. Sometimes, these restrictions are supposed to be temporary, but more often than not, they become permanent and are difficult to remove once they become ingrained into the fabric of society.

With regard to media freedom, Article Nineteen of the UN's Universal Declaration of Human Rights is often referred to as the embodiment of the ideal situation regarding freedom of expression and opinion, as stated thus:

Everyone has the right to freedom of opinion and expression: this right includes the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media, regardless of frontiers.

Media freedom is considered important for a number of reasons, as follows:

- Since information received is perceived as not being distorted or biased, this allows the citizenry to make informed decisions;
- Media function not only as an index but predictor of change in most nations throughout the world; and
- Media are part of the system of checks and balances in a democracy that is based on libertarian principles, acting as the “watchdog of the people” and as the “Fourth Estate.”
- There are strong causal relationships between the status of democracy and role and importance of media in the modern state. Indeed, one cannot do without the other in contemporary society, where the rapid growth of alternate media is challenging government attempts to muzzle the media.

Restrictive Laws Affecting Media Freedom

In Malaysia, Article 10 of the Federal Constitution deals with freedom of speech, freedom to form organisations, and freedom of assembly. However, these general provisions have been circumscribed since independence in 1957.

The close relationship between media and the state in Malaysia is essentially a legacy of the British colonial era. Even before independence, there were already restrictions upon freedom of speech and expression in Malaya, chief among which were the Sedition Ordinance of 1948, the Printing Presses Ordinance (1948) and the Internal Security Ordinance (1948).

Taken together, the provisions in these ordinances can be categorised as belonging to two kinds of restrictions to absolute media freedom, i.e.

- (a) prior restraint - restrictions on publications or broadcast in advance, and
- (b) post-publication constraints - those which operate after publication or broadcast.

In the instance of these laws, the erstwhile British colonial masters cannot be blamed entirely for the current state of restrictions upon media freedom. In fact, after independence most of the Ordinances introduced by the British were strengthened and enacted by the Malayan parliament in 1957.

All media, including print media were subject to licensing for reasons of political and economic interests, hence under the cloak of political expediency, media and the state were brought together, and still remain bonded in a symbiotic relationship. This relationship was legitimised by the government’s desire that media should be used as tools for national unity and development and by the concept and practice of development journalism.

The further restrictions upon freedom of speech and expression occurred after the May Thirteenth Incident of 1969, as a result of which parliamentary democracy was

suspended. When it was restored in 1971, laws relating to prior restraint and post-publication controls were amended and strengthened by the Malaysian parliament.

However, the BN government has had to implement new media regulations to deal with rapid media development over the last two decades. These include the need to promote a climate of liberalisation, particularly in telecommunications and broadcasting, and also the need to regulate communication in cyber space.

Subsequently, Malaysian leaders have been cognizant of avoiding conflict with the basic philosophical approach to new media because of the following factors:

- Promises made by the Mahathir administration that there will be fewer restrictions on the new media, e.g. Multimedia Bill of Guarantees
- Monitoring of media freedom by external organisations
- Need to provide suitable and stable investment climate
- Enlightened political leadership under the Abdullah administration

The bi-partisan nature of Malaysian media (especially print media and newly-established websites) has become more evident since 1999. Both mainstream print media and the websites are divided into pro-government and opposition media, and there seems to be a running battle between these two groups. Both government and opposition parties seem convinced that media control is vital for their electoral success, and the “media and poster war” has become a regular feature in previous general elections (1995, 1999, 2004 and 2008).

The above notwithstanding, a “cyber war” has also begun to emerge, especially in the first and second decades of this century.

Furthermore, since mainstream media are either owned by companies associated with the ruling BN coalition or (in the case of RTM) run as government departments, media personnel tend to err on the cautious side by downplaying the opposition and highlighting BN achievements. There have been cases where journalists and broadcasters who try to present balanced reporting on contemporary issues have either been reprimanded or sidelined.

The political *tsunami* emanating from the March 2008 general elections in Malaysia has thrown up many current socio-political issues that are being openly debated. In the media scene, these include the issue of whether obsolete media regulations and policies will wither away or whether new regulations will lead to greater authoritarian control. An allied issue is whether cyber space and bloggers should be regulated, and if so, in what manner and by whom.

The *Press Freedom Index* 2010 report published by *Reporters Without Borders* showed that Malaysia’s ranking fell to 141st place out of 178 countries surveyed, as compared to its 131st placing in 2009 (*The Sun*, May 3rd 2011, p.4). This is indeed a matter of grave concern for all those who wish to see greater media freedom in Malaysia.

It was also stated that Malaysia ranks lowest in a 2006 survey by *Privacy International* on privacy protection involving 50 countries. We feel that privacy protection will become an even more difficult task with the developments in new media technology. This is an area where a heightened sense of self-regulation and media ethics is called for.

A related question revolves around the inherent conflict arising from outmoded and anachronistic media laws, and the BN's promise to allow greater freedom in cyber space. Will political commentators, especially bloggers, continue to be hauled up and charged in the courts under these restrictive media laws, or will the ruling coalition permit greater media freedom. What is the future direction of media regulation in Malaysia?

Citizens are receiving mixed signals with regard to the question of media liberalisation. For example, public officials have launched their own blogs and it was announced that the BN federal government would operate blogs to take on critics in the blogosphere (*Star*; June 1st 2008, p. F35). Apart from creating and attending to his own blog, Prime Minister Dato' Sri Najib Tun Razak has urged his ministers and senior government officials to engage the public in the blogosphere. Alarmingly however, it was revealed in the Federal Parliament that 22 websites and blogs have been investigated for airing false, pornographic (sic) and baseless allegations (*The Star*, June 1, 2008, p.N51).

Freedom of Information

In advanced democracies, there are acts to give the citizens greater access to information, based on the belief that information is a vital commodity that must be made available to all who seek it.

The only restrictions concern information related to national security and movements of the armed forces. Even then, classifying information as an official secret is not easy, and there is usually a statute of limitations after which documents classified as secrets can be declassified.

Hence many countries have replaced outmoded and anachronistic legislation pertaining to official secrets and replaced them with "*Freedom Of Information (FOI)*" acts. In addition to making it easy for citizens to gain access to information, another justification for these acts is that they promote greater transparency and accountability in both public and private sectors. As developed countries move towards becoming knowledge and information societies, information has become more readily available through the development of ICT worldwide, with a proliferation of websites, search engines, etc.

In Malaysia, however, we have inherited the OSA, initially introduced in 1948 as part of the measures to deal with the Communist insurgency. Not only that, since independence in 1957, the provisions of this act have been steadily tightened, so that

many matters can be classified as “official secrets.” There have been quite a few cases where citizens have been charged and convicted under this Act.

As we enter the second decade of the 21st century, many organisations have urged the federal government to repeal the outmoded OSA and replace it with an FOI act. The latest call for the repeal came (*on World Press Freedom Day*; May 3, 2011) from the *Penang Chinese Journalists and Photographers Association* (PEWAJU). Noting that the Selangor state government is moving to enact this law, and that the current FOI Bill is in its consultation stages in Penang, this organisation urged the federal government to abolish the OSA and implement the FOI Act (*The Sun*, May 3rd 2011, p.4)

Role of SUHAKAM

A report in Utusan Online on 30 September 2005 stated that the late Tan Sri Dato’ Harun Mahmud Hashim, a former Supreme Court judge, who died a week earlier after suffering a heart attack, had been due to present a paper on “Freedom of Speech, Communication and the Press” at a seminar on “Constitutionalism, Human Rights and Good Governance.” His paper suggested that SUHAKAM, the *Malaysian Human Rights Commission* of which he had been a member, planned to review the laws affecting freedom of expression.

Harun wrote that the Commission had received a number of memoranda from people and groups who claimed they had been unjustly denied a renewal of printing permits under the *Printing Presses and Publications Act* 1984. Others complained about restrictions under the *Sedition Act* 1948, the *Internal Security Act* 1960 and the *Official Secrets Act* 1972 (OSA). He stated that journalists blamed contempt of court laws and “exorbitant damages” under the *Defamation Act* 1957 “for creating a culture of fear, self-censorship and cautiousness to the detriment of effective and creative reporting of issues of public interest.”

A Suhakam Workshop on Freedom of the Media held in 2004 proposed a Freedom of Information Act, an independent and self-regulating Media Council, independent judicial review of administrative decisions relating to the media and a review of the OSA. (Utusan Online, 30 September 2005).

This suggests that there are government-appointed bodies like the SUHAKAM that are pushing for de-regulation, re-regulation and self-regulation of the media. However, a search of SUHAKAM’s website revealed that the issue of media freedom has not been researched and focused upon in recent years.

The Way Forward

Stating that media at the start of this century have undergone a radical paradigm shift, Banerjee (2009, p.2) affirms that;

Gone are the days when the media were fully subservient to the state with one principal mission - national development. Today, the media seem above all a lucrative and profit-driven commercial sector of activity. The media industry and markets are beginning to dominate media agendas and content, with governments taking a back seat, and with a mandate of determining overarching policy frameworks and regulation.

He notes that this paradigm shift is not without its consequences, for it poses new challenges for media policy, regulation and development. In contexts which are marked by political, racial and religious tensions, he predicts that the approach to media regulation can potentially lead to social fracture and conflict.

In Malaysia, the inherent conflict arising from prior restraint laws such as these and the freedom promised by the new cyber laws seems set to last for the foreseeable future. While a whole new vista has been opened up in the expanding public sphere, the political leadership on both sides of the political divide still seems to be in a state of after-shock, with no clear statement of what to do for the future. We feel the current uncertainty will last for some time.

The possibility that market liberalisation will lead to greater media freedom in Malaysia seems remote, judging from the statements of past and present leaders. Our assessment is that the ruling governments already have a bewildering array of media laws and regulations, some of them outdated and anachronistic, and some of them contradicting each other. Licensing and attendant requirements for print media continue to remain a huge stumbling block for media freedom (Ramanathan, 2009).

It is heartening that NGOs are beginning to make themselves more articulate with regard to issues involving media freedom. We urge the leaders in the ruling BN coalition to take heed of these voices before deciding to tighten existing laws and/or imposing new laws to increase censorship of print and electronic media.

In our opinion, strengthening existing laws and imposing new laws with a view to increasing the present level of censorship and monitoring of media is not only a retrograde step in the expanding public sphere, it is also counter-productive for the following reasons:

- Much of the taxpayers' money will be allocated to the upkeep of existing governments tasked with this purpose (e.g. Ministry of Home Affairs), and to establishment of new agencies that may be tasked with monitoring the new media (e.g. MCMC).
- The whole concept of censorship goes against the very grain of the need to have free and independent media that can contribute to the development of the Malaysian civil society.

Second, the concept of media as the *Fourth Estate* holds that it is the duty of media to scrutinize the private lives of individuals who hold public office. This is especially important for the media to ensure that people in public office are not corrupt, and that they act with transparency and integrity. Hence, media are expected to act as the “watchdog of the citizenry.”

The path towards greater media freedom is still long and treacherous. Thus, we anticipate that the government will continue to play the role of being the leading media watchdog for some time to come. An indication of future directions came from current Information, Communications and Culture Minister Rais Yatim who warned that the Communications Act 1998 would be used to bring errant bloggers to book. (*The Sun*, April 17, 2009). Rais said his Ministry was not out to hunt down bloggers, but to ensure that the news was “not twisted.”

On the opposite side of the coin, some sectors of the media have been forthright in their stance against the tight watchdog role of the government. For example, *The Sun* newspaper ran an editorial urging Home Minister Hishammuddin Hussein to review the country’s security laws. (“Govt. must review preventive laws,” *The Sun*, May 22, 2009). Further a group of 40 NGOs spearheaded by the *Centre for Independent Journalism* have called for the repeal of the Printing Presses and Publications Act (PPPA).

The PKR-led government in Selangor state has launched its own newspaper and a TV website, and plans to table a *Freedom of Information Act* soon. In launching these initiatives, Selangor Menteri Besar Khalid Ibrahim said Malaysia’s position in the *International Freedom of the Press* rating had deteriorated from 92 in 2006 to 124 in 2007 and 132. “This does not reflect a country that claims to be democratic, he said” (*The Sun*, May 20, 2009).

Developments in the new media technologies - Internet, mobile telephony, audio-text services, SMS, MMS and other new media forms - and the recognition of their contribution to economic growth and internationalisation bear strong implications for the further deregulation and liberalization of the broadcast and telecommunication sectors as well as a push for a stronger self-regulatory environment of the media industry. This self-regulation though can only benefit the industry if it is comprehensive and has sufficient details to provide proper guidance to the relevant parties.

Market liberalisation has led to media growth, particularly with the increase in the privatised television and radio stations and online publications. Regulators, particularly of the converging media, have examined ways to promote greater media freedom and industry self-regulation. However, in order for self-regulation to succeed and be effective, all interested stakeholders must put aside their differences and competitive instincts so as to establish, maintain and nurture an independent mechanism that will promote industry self-regulation.

Although there has been much talk about establishing an independent media council (an idea supported by SUHAKAM) from as early as the 1980s, it has been just talk and no action. Judging from the current scenario, this will not occur in the foreseeable future.

At the time of writing, there has been a move by the federal government (in October 2008) to revise and/or repeal some of the restrictive laws. *The Restricted Residence Ordinance* has been repealed. The government has also announced that the *Internal Security Act* will be repealed, and a review committee has been established; it is expected to submit its recommendations to the federal parliament after the next general elections. This move augurs well for the development of fundamental freedoms in Malaysia.

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