

SEDITION ACT AS A PILLAR OF STRENGTH IN MAINTAINING UNIFICATION FOR MULTIRACIAL NATION

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ABSTRACT

Malaysian Sedition Act provides sentences for seditious acts. Late 2014, there was a suggestion to abolish this Sedition Act for reason that Malaysia still able to maintain its multiracial unity without this Act. Thus, this working paper is to analyse the purpose of the implementation of Sedition Act in Malaysia and the impacts if the Act is abolish. Qualitative research method is used through analytical study of case laws and provisions of laws stated in the Sedition Act and the Federal Constitution. Research findings showed that Sedition Act had been in practice since the British occupation for the purpose of maintaining the unity of multiracial community with different religions and customs. This working paper concluded that Sedition Act is in fact a pillar of strength in maintaining the unification of multiracial nation in Malaysia. The Act upheld a crucial part of statutory provisions in the Federal Constitution for the stability and unity of union. Moreover, Sedition Act provides blanket protection via maintaining protection and security for the purpose of harmonious and safe nation.

Keywords: Sedition Act, multiracial unity, nation stability

INTRODUCTION

It is not easy to ensure unity and stability in a country with many races, ethnics, religions, beliefs and customs like Malaysia. As such, Malaysia relies heavily on laws, rules and procedures (although not solely) to ensure harmony, a route for maintaining stability and unity in the society, albeit the main objective of the Sedition Act *vis a vis* with the core spirit of the law which is to maintain harmony among Malaysians of different races and religions. Sedition Act was adopted in 1948 by the British into Malaysia and it has continued to exist in its original form until today. Even though there are many other Acts that can help maintaining stability and unity (whether directly or indirectly), Sedition Act has become one of the best suited Act to help in this affair, so far. Set of rules or laws are essential for without them, the law of the jungle emerged. Living in a multi-racial, multi-ethnic and multi-religions community we are exposed to various and many sensitive issues which could create ill-feeling and dissatisfaction, and could finally ended up in a tragedy.

BRIEF HISTORY OF SEDITION ACT

The Sedition Act started life as the 1351 English *Statute of Treasons*. Hence sedition is closely associated with treason. In the 1500s, King Henry VIII broke away from Rome and established the Church of England with him and not the Pope in Rome as the head of the church. This was heavily opposed and criticised by the Catholics and this was when the sedition law was heavily used. Then the British came to the Malay states. However in 1941, the British lost Malaya to the Japanese, and when the Japanese surrendered at the end of World War II, the British returned to Malaya and created the Malayan Union, which was opposed by the Malays and triggered the formation of Umno. Due to this strong opposition, in 1948, the British abandoned the Malayan Union and created the Federation of Malaya or *Persekutuan Tanah Melayu*. Nevertheless, while the nationalist Malays (in particular those in Umno) accepted this, the more radical Malays plus the Socialists and Communists opposed it. To stifle this dissent, the British introduced the Sedition Act (1948) and those opposed to the British and to the formation of the Federation of Malaya took to the jungles to continue their opposition as an armed struggle. History showed that Sedition Act started life as a weapon to clamp down on and punish those aligned to Rome and those who criticised the English Monarch. It was then 'exported' to Malaya as a weapon to clamp down on and punish those who opposed the British and the Federation of Malaya¹.

SEDITION ACT 1948

Sedition Act 1948 is a set of Malaysian laws that is enacted to govern and monitor public discourse in order to prevent any public actions that can be interpreted as 'seditious'. According to existing interpretation of this Act, any act, speech or words that have 'seditious tendency' can be prosecuted as a criminal offence. Under the Act, those who commit an offence can be fined up to 5,000 Ringgit and/or imprisoned up to three years. A second offence carries a sentence of up to five years imprisonment.

The meaning of 'seditious tendency' is defined in section 3 of the Sedition Act 1948 and in substance it is similar to the English common law definition of sedition, with modifications to suit local circumstances.²

¹ Raja Petra Kamaruddin. (2013). *The Sedition Act (1948)* | Malaysia Today
www.malaysia-today.net/the-sedition-act-1948/

² James Fitzjames Stephen's '*Digest of the Criminal Law*' which states that under English law 'a seditious intention is an intention to bring into hatred or contempt, or to excite disaffection against the person of His Majesty, his heirs or successors, or the government and constitution of the United Kingdom, as by law established, or either House of Parliament, or the administration of justice, or to excite His Majesty's subjects to attempt otherwise than by lawful means, the alteration of any matter in Church or State by law established, or to incite any person to commit any crime in disturbance of the peace, or to raise discontent or disaffection amongst His Majesty's subjects, or to promote feelings of ill-will and hostility between different classes of such subjects.' The Malaysian definition has of course been modified to suit local circumstance and in particular, it includes acts or things done 'to question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of Part III of the Federal Constitution or Article 152, 153 or 181 of the Federal Constitution.'

THE PURPOSE OF SEDITION ACT

Enforcement must be fair to create a more peaceful, stable and harmonious country. Basically, what is considered 'seditious' under the Act is very wide. Section 3(1) of the Act uses the phrase 'seditious tendency', which is interpreted as the tendency 'to raise discontent or disaffection amongst the subjects of the Yang di-Pertuan Agong or of the Ruler of any State or amongst the inhabitants of Malaysia or of any State.'

A seditious tendency is defined in section 3(1) as follows:

1. to bring into hatred or contempt or to excite disaffection against any Ruler or government.
2. to seek alteration other than by lawful means of any matter by law established.
3. to bring hatred or contempt to the administration of justice in the country
4. to raise discontent or disaffection amongst the subjects
5. to promote ill-will and hostility between races or classes
6. to question the provisions of the Constitution dealing with language, citizenship, the special privileges of the Malays and of the natives of Sabah and Sarawak and the sovereignty of the Rulers.

Section 4(1) of the Act covers the preparation of an action, which would have 'a seditious tendency'. It also covers speech and the printing, publishing, selling (or offering for sale), distribution, reproduction or importation of seditious materials. In a briefing session with journalists, human rights lawyer Sivarasa Rasiah pointed out that the burden of proof lay with the person who has in their possession articles deemed seditious.

However, it was claimed that the wideness of the provision plus the interpretation of the courts has led the Sedition Act to become very vague. It led to conclude that the act has been used in the past to prosecute Lim Guan Eng for criticising the Attorney General over a rape case, to raid online news portal Malaysiakini and more recently to charge Adam Adli, a 24-year-old student activist who wanted to overthrow the government. The Act has also been employed in investigation of newspaper Utusan and two right-wing bloggers for racial sedition after publishing materials seen to provoke anti-Chinese sentiment. Moreover, according to some media commentators, this legal uncertainty very much favours the prosecutor. It also means that what is seditious is not just a legal but also a political issue.³

THE IMPLEMENTATION OF SEDITION ACT

It is important to note that the Sedition Act 1948 was firstly enacted to combat the communist insurgency. Later, after the May 13, 1969 riots, amendments were made in the Federal Constitution through an Emergency Ordinance 1971 by criminalizing any questioning on citizenship (Part III), on national language (Art 152), on the special positions of the Malays and the rights of other races (Art 153) and on Rulers' sovereignty (Art 181). This act is therefore constitutionalized thus its validity cannot be challenged. On December 2007, a former Internal Security Act detainee, P. Uthayakumar, was charged with publishing a seditious letter on the 'Police Watch Malaysia' website, addressed to then prime minister of Britain, Gordon Brown. He later made the declaratory application to declare the Sedition Act unconstitutional. His application was rejected.

Historically, the Sedition Act has been invoked against those critical of the government, including members of parliament. Under the Act, members of parliament can have their parliamentary immunity suspended, if found guilty of sedition. The relevancy of Sedition Act in Malaysia today should not be in doubt. The government should be allowed to take action against any party or individual who intent to incite hatred through sensitive issues that will threaten the unity of our nation. Proper provisions for legal action against those who use sensitive issues to undermine national solidarity, is not uncalled for. This is how sedition Act plays its part in maintaining unity and stability in a multi racial community.

Malaysia is particularly relevant in this context due to the extreme historical and current importance of ethnicity in human relations, economics, politics and the general tenor of the nation. With diversity, groups and customs, Malaysian people are customarily divided into four categories: Malays, Chinese, Indians and others such as the multiple groups of

³ Raja Petra Kamaruddin. (2013). *The Sedition Act (1948)* | Malaysia Today
www.malaysia-today.net/the-sedition-act-1948/

natives of Sabah and Sarawak, the 'orang asli' indigenous groups of the peninsula, Eurasians, Europeans, Thai, Indonesians, Arabs and so forth.⁴

The current public controversy started with a student in Penang who 'liked' the 'I Love Israel' page on his facebook page which resulted in his investigation under the Sedition Act. His incident was followed by the high profile case of Assoc. Prof. Dr. Azmi Sharom, a UM law lecturer and columnist, who was charged under the Sedition Act for comments he made about the Perak constitutional crisis in relation to the current Selangor MB crisis in an online portal article. Soon after, MalaysiaKini online news portal reporter Susan Loone was also charged under the Sedition Act. She was charged in relation to her report in the online news portal relating to the Pasukan Peronda Sukarelawan (PPS) arrests in Penang. These arrests under the Sedition Act 1948 were all for probable cause. Flashback to the attack against French satirical magazine Charlie Hebdo that left 12 dead.⁵ It is not impossible that our country could face a similar incident, and hence, the police would nip the problem of extremism in the bud. We can prevent this incident *via* the Sedition Act before it spreads beyond control and left dead bodies to be collected by the government. It will then create more hateful and vengeance feelings and this could end up in a riots and cause more terror incidents.

The Malaysian Government has always been committed to curb irresponsible acts and as such anyone found raising issues that can cause anger or public disorder, will be subject to legal action. Action on the individual will not take into account his or her status or background, and the laws in place will ensure that social harmony is preserved. Government will also look into such cases based on facts and not on the individual's background, religion or political affiliation. The act is still important in maintaining security, harmony and racial unity in the country.⁶

As illustrated by these cases in which they have been applied, it is clear from these cases that the law does at its core addressing a legitimate aim.

In the case of Public Prosecutor v. Param Cumaraswamy,⁷ Sim Kie Chon, was arrested under the ISA for possession of a firearm: an unlicensed revolver and five rounds of ammunition. The then Vice President of the Bar Council, Param Cumaraswamy made an appeal to the Pardons Board to reconsider the petition for the commutation, or downgrading, of Sim Kie Chon's sentence. Cumaraswamy prepared a statement from which he read and hand out to reporters. His statement clearly did not show any tendency to cause or raise disaffection among the people. Nor did Param's statements have a tendency, to create discontent among the general public towards authority. Cumaraswamy was acquitted of sedition.

In another case, Public Prosecutor v Oh Keng Seng.⁸ Oh Keng Seng was charged with seditious tendency for uttering seditious words in Mandarin. The trial judge placed importance on preserving harmony especially in a multi racial

⁴ William Guinee. (2005). Race, Ethnicity, and Ethnic Relations: A Malaysian Case Study. A Curriculum Project For The Fulbright-Hays Seminar Abroad: Malaysia and Singapore, 2005. Westminster College Fulton, Missouri.

⁵ Charlie Hebdo shooting (January 7, 2015). - Wikipedia, the free encyclopedia
en.wikipedia.org/wiki/Charlie_Hebdo_shooting
Charlie Hebdo (French pronunciation: [ʃaʁli ɛbdo]; French for Weekly Charlie) is a satirical weekly newspaper in France that features cartoons, reports, polemics, and jokes. Charlie Hebdo has a history of attracting religious controversy.

⁶ Sedition Act to stay while new act still being drafted - NancyAstro Awani |Updated:October 07, 2014
Read more at:<http://english.astroawani.com/malaysia-news/sedition-act-stay-while-new-act-still-being-drafted-nancy-45483?cp>

⁷ [1986]CLJ (Rep) 606.

⁸ (1978) 2 MLJ 9

community and the lessons learned based on past historical events like the May 13 incident. In the final issue, the judge declared that the accused had not succeeded on a balance of probabilities that the speech delivered came within the permissible limits as set out in section (2) of the Sedition Act. The accused was fined RM2000 in default of six months imprisonment.

A very interesting appeal that deals with sedition is the case of *Melan bin Abdullah & Anor. v. Public Prosecutor*.⁹ The appellants are the then-editor-in-chief of the Bahasa Malaysia publication *Utusan Melayu*. Melan Bin Abdullah, and the author of an editorial with the subheading “Abolish Tamil or Chinese medium schools in this country” (referred to in the case simply as “the second appellant”). In the first trial, both were charged with sedition and given fines of \$500 and \$1,000 respectively. For the April 6, 1971 edition of *Utusan Melayu*, the second appellant wrote a subheading for an editorialized report of a talk given by the Member of Parliament, Musa Hitam. The title he settled on was “Abolish Tamil or Chinese medium schools in this country” – according to the MP, this was not necessarily representative of his talk, nor was it actually a call to abolish Chinese and Tamil’s schools. Melan Abdullah, as editor-in-chief for the *Melayu Group* oversaw a total of 10 publications, with a staff of over 140, and as such never read every article of each publication every day. In November 1971, both were charged with sedition.

The Sedition Act 1948 is a restraining law; it tells you what not to do. ‘Seditious actions’, *inter alia*, include a tendency to incite hatred towards a ruler or against any government; excite people to take over any government territory using unlawful means; bring into hatred or contempt the administration of justice in Malaysia; and promote feelings of ill-will and hostility among different races and classes. The Sedition Act applies to any act, speech, words, or publications. Under ‘publications’, the Act interprets it as anything written or printed or in any other manner capable of suggesting words or ideas, and every copy and reproduction or substantial reproduction of any publication.

Therefore, no one will be prosecuted under the Sedition Act if the person or incorporation avoid inciting, creating, seeking, raising, promoting or bringing hatred, contempt, disaffection, discontent, ill-will, and hostility in any forms whatsoever whether in words, actions, printing or publishing. This is essential steps to provide protection to the public and to ensure harmonious feelings among the nation. It should well be adopted as constitutional safeguards.

CONCLUSION

There is no need for the Act to be abolished. However, in order to accommodate the Act with the latest development and in par with the latest legal quandary, there is a need to update the Act to be more refined, specific and relevant so the implementation would be best suited for the Act to be legally, morally and socially justified. Being a country with multi-racial nation, Malaysia cannot be ousted on issues of racism, discrimination, unfairness, segregation, polarization, antagonism and envy between the ethnic groups. Thus, the provisions in Sedition Act are not merely to support political issues or covers political members. It focuses more on creating harmony, upholding security and maintaining stability in a multi-racial nation. Not an easy tasks with a country like Malaysia which, as a respect to democracy, also allows freedom of religions and customs. Until and unless we have a better act to maintain unification for multiracial nation, Sedition Act is here to stay.

⁹ [1971] 2 MLJ 280

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