

Communication development and human rights - Malaysia

Ahmad Rejal Arbee

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By

Ahmad Rejal Arbee

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COMMUNICATION DEVELOPMENT AND HUMAN RIGHTS - MALAYSIA

Fundamental Liberties as universally accepted are guaranteed to all Malaysians through one whole part of the 14 parts that made up the Malaysian Constitution, called the Federal Constitution, first adopted in 1957 when the Federation of Malaya gained its independence from the British and subsequently adopted for the whole of Malaysia on its formation in 1963. There are nine specific Articles forming Part Two of the Constitution entitled Fundamental Liberties which guarantee various rights to Malaysians. These Articles taken in their totality conform to the various provisions pertaining to human rights as enunciated in the Universal Declaration of Human Rights adopted and accepted by all member states of the United Nations Organisations. This Declaration have since been further enhanced and detailed by various other Covenants including the International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights as well as the Universal Islamic Declaration of Human Rights.

Among the basic human rights as enunciated in the UDHR are:

The right to life, liberty and security of person;
freedom of religion; freedom of opinion and expression;
freedom of assembly; self-government through elections;
freedom from slavery and torture; the right to a fair

trial and to equality before the law; presumption of innocence until proven guilty; the right not to be subjected to retroactive laws; freedom of movement within one's state and freedom to leave or return to it; the right of assylum; the right to a nationality; the right to find a family; the right to privacy; the right to own property; to social security and to work; the right to form and join trade unions; the right to an adequate standard of living; to education and to rest and leisure; and the right to participation in the cultural life of the community.

These rights as well as other rights decreed in the various other international covenants pertaining to human rights can basically be grouped into three categories.

The first pertains to the right to be free from governmental violation of the integrity of the person. These include arbitrary arrest or imprisonment; torture; and cruel or inhuman treatment or punishment.

The second category would include right to the fulfilment of basic needs such as food, shelter, health care and education.

And the third category would be such rights as the right to freedom of thought or religion or assembly; right to enjoy civil and political liberties; the right to freedom of speech, freedom to take part in government as well as freedom to move within and outside one's country.

Basically these can be termed as social, economic, civil and political rights. These rights though mutually exclusive, are very much interdependent and supportive of one another. None should be given priority to the exclusion of the others. Unfortunately in discussing human rights issue, Western influenced liberals seem to focus only on civil rights and political liberties while those opposing these so-called liberals talk in terms of having to provide food, shelter and health care and education for the people - that is economic and social rights must be attained first before political and civil rights could be taken up.

That is why the liberals seem to equate human rights as mere political and civil rights of the individual against the various legislative measures, suggesting suppression of the people's rights by the authority or government. It is as if the rights of the individual have been violated merely

because legislation had set out guidelines defining the various freedoms guaranteed him. But the truth is that society also needed to be protected against the malcontents and the anti-socials who cannot conform the existing rules and regulations but wish to take the law onto his hands to the detriment of society at large. The society also have the right to be protected against such individuals just as other individuals in that society also have rights for protection against such elements.

Both these opposing groups seem to forget that just as it is impossible for people who do not possess civil and political rights to enjoy full economic and social rights so too a person cannot live merely on civil and political rights alone without knowing where or when is his next meal, adequate shelter or be provided with proper health care should he fall sick. So discussion of human rights to be meaningful must necessarily be in its totality. All these rights are the minimum expected of any country and in Malaysia all these various rights are guaranteed both explicitly as well as implicitly in the Federal (Malaysian) Constitution.

Generally Malaysians are guaranteed of their rights to be free of governmental violation of their integrity. They can also expect to meet their own basic needs of food, shelter, whilst the state ensures basic health care and education are made available to every citizen. To a large extent through various projects and development programmes carried out by the government the people, even those in the remotest villages, can expect to have such basic necessities. In addition they are also guaranteed of their basic fundamental rights as provided for in the Malaysian Constitution.

Part Two of the Constitution is explicit on Fundamental Liberties which is provided for in nine Articles. These rights include the right to life and personal liberty; the prohibition of slavery and forced labour; protection against retrospective laws and repeated trials; equality before the law and the right to equal protection of the law; the right to freedom of movement and prohibition of banishment; the right to freedom of speech, assembly and association; the right to freedom of religion; the right to education and the right to property.

The Constitution being the document embodying fundamental principles to which a nation is governed must necessarily

provide for all eventualities and situations that the nation and all its citizens encounter and will face, For it to be workable and enduring it must provide for various qualifications to encompass various situation and needs. This being so no principle governing fundamental rights could be absolute.

And in cognisance of this the Constitution provide one special part (Part IX) that relates to special powers against subversion, organised violence and acts and crimes prejudicial to the public and emergency powers. It provides for three articles (Articles 149, 150 and 151) relating to legislation against subversion and action prejudicial to public order; circumstances allowing for the proclamation of emergency; and preventive detention and its restrictions.

Article 149 provides for the validity of Parliament to legislate against an action or a threat that could:

- a) cause the people to fear organised violence against persons or property;
- b) excite disaffection against the Yang di-Pertuan Agong or any government in the Federation;

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- c) promote feelings of ill-will and hostility between different races or other classes of the population likely to cause violence;
- d) procure the alteration of any established law other than by lawful means;
- e) prejudicial to the maintenance or the functioning of any supply or service to the public; and
- f) prejudicial to public order or security.

And so the Internal Security Act 1960 (ISA) is promulgated under this Article. Article 150 provides for the proclamation of emergency in a grave emergency situation where the security, economic life or public order is threatened. It also provides for the proclamation before the actual occurrence of the event if the Yang di-Pertuan Agong is satisfied that there is imminent danger of the occurrence of such event.

Quite apart from this the nine articles constituting Fundamental Rights also provide for restrictions and qualification. Article 5 providing for liberty of the person while guaranteeing that no one be deprived of his life or personal liberty also states that this guarantee shall not apply to the arrest or detention of any person under existing law relating to restricted residence.

Article 6 prohibiting slavery and forced labour also provides that Parliament may by law provide for compulsory service for national purposes and also qualifies that work incidental to the serving of a sentence of imprisonment imposed by a court of law do not come within the meaning of forced labour.

Article 7 pertaining to protection against retrospective criminal laws and repeated trials while among others provides that a person who has been acquitted or convicted of an offence shall not be tried again for the same offence, allows for retrial to be ordered by a superior court in cases where the conviction or acquittal has been quashed.

The provision in Article 8 guaranteeing all persons to be equal before the law and entitled to equal protection of the law and that citizens will not be subject to discrimination on the ground of religion, race, descent or place of birth does not invalidate or prohibit among others:

- a) provision regulating personal law;
- b) provision or practise restricting office or employment connected with the affairs of any religion;

- c) provision for the protection, well-being or advancement of the aborigines including reservation of land and reservation of positions in public service.
- d) provision restricting enlistment in the Malay Regiment to Malays.

The Constitution, however, also guarantees the safeguarding of the special position of the Malays and the natives of Sabah and Sarawak though it also ensures the legitimate interest of the other communities. (Article 153).

Article 9 allows freedom of movement and prohibits banishment of citizens. But this is again qualified with the provision that Parliament may by law impose restrictions in respect of movement and residence.

Article 11 provides the right to every person to profess and practise his religion. Each religious group is also given the right to manage its own religious affairs, establish and maintain institutions for religious or charitable purposes and to acquire and hold property. It also guarantees each person to propagate his religion with the proviso that

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propagation of any religious doctrine or belief other than Islam may be prohibited by law among people professing Islam.

The rights to education is provided for in Article 12 which states that there shall be no discrimination:

- 1) in the administration of any educational institutions and admission of pupils;
- 2) in providing financial aid for the maintenance or education of pupils or students in any educational institution.

The Article also provides every religious group the right to establish and maintain institutions for the education of children in its own religion and that there shall be no discrimination on the ground only of religion in any law relating to the institutions or in the administration of such law. Notwithstanding this the Article also provides that it shall be lawful for the Federation or a State to establish, maintain or assist Islamic institutions. It also guarantees that no one be required to receive instruction in or take part in any ceremony or act of worship of a religion other than his own. It also provides that the religion of a person under 18 be decided by his parent or guardian.

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Article 13 guarantees that no one be deprived of his property unless in accordance with the law but that no law should be promulgated for the compulsory acquisition or use of property without adequate compensation.

Among all the basic rights provided for under Fundamental Liberties, Article 10 pertaining to freedom of speech, assembly and association is deemed the most important especially that relates to freedom of speech in so far as this paper is concerned. This will be dealt with in some detail. All these freedoms are only given to citizens.

Freedom of Assembly is provided for in Article 10(1)(b) which states: all citizens have the right to assemble peaceably and without arms. This freedom is subject to restrictions deem necessary or expedient in the interest of security and public order as in Article 10(2)(b).

The right to form associations is guaranteed by Article 10(1)(c) and is subject to restrictions deem necessary or expedient in the interest of security, public order or morality (Article 10(2)(c)). This right is also further restricted by any law relating to labour or education.

The most important provision in Article 10 pertains to freedom of speech which states: every citizen has the right to freedom of speech and expression (Article 10(1)(a)). The constitution by guaranteeing freedom of speech recognises it as a basic human right and based on the fundamental understanding that freedom of speech is essential in supporting and ensuring other freedoms. It is universally recognised that without freedom of speech, all intellectual freedoms, such as freedom of thought, freedom of religion and freedom of learning become more ideal instead of being real. "The importance of freedom of speech and expression cannot be overestimated because it lies at the foundation of all democratic governments for without free political discussion no public education is possible." Chief Justice Malaysia, Tan Sri Abdul Hamid Omar's speech opening MPI seminar "The Press, the law and the Courts", 30th March, 1987.

"Freedom of speech goes to the heart of the natural right of an organised freedom loving society to impart and acquire information. The essence of the right does not consist in merely making use of the human voice but lies in the ability to convey one's views to others. It follows that the right to freedom of speech and expression carries with it the right to propagate and circulate one's views and opinions." C.J.

Thus freedom of speech carries with it not just the right to speak freely but include freedom of the press, freedom to give opinion, freedom to write, read and listen, freedom to publish, print, distribute and sell as well as freedom to receive information and other related freedoms. The drafters of the Constitution recognise that a freedom of such amplitude will invariably risk abuse and thus it can never be given in the absolute. The government and the various limbs of government - the legislative, the executive and the judiciary - as well as the people needed to be protected against such abuses. And protection there are through various provisions allowed by the Constitution. Based on what is allowed by the Constitution to enable the government to set out the parameters within which freedom of speech and by extension freedom of the press are allowed to operate, there is a myriad of limitations, restrictions, restraints and prohibitions imposed by the Statutes as well as by common law as practised in the country.

Article 10 itself provide that Parliament may by law - 10(2)(a) - impose on the right to freedom of speech and expression such restrictions as it deems necessary and expedient:

- a) in the interest of national security;
- b) in the interest of friendly relations with other countries;
- c) in the interest of public order;
- d) in the interest of morality;
- e) to protect the privileges of Parliament or State Legislative Assemblies;
- f) to provide against contempt of court;
- g) to provide against defamation; or
- h) to provide against incitement to any offence.

These restrictions form part of the Federal Constitutions which became operational following the country's independence in 1957. And under the various provisions of the Constitution, laws were enacted further defining the parameters within which freedom of speech and press is allowed. There is in fact now in operation a plethora of legislation which trammel upon the freedom of the press to write and publish whatever it likes. And any breach of the provisions of the law carries with it penal consequences.

The authority sees these various amendments as well as the promulgation of new legislation as expedient to meet the ever changing challenges of a complex pluralistic society that is

made up of basically three major races - the Malays accounting for nearly 50 percent of the population, the Chinese (about 35 percent) and the Indians about 10 percent with the remainder made up of various other indigeneous as well as immigrant races. And this melting pot of diversity is further compounded by differences in religious beliefs, languages, cultures as well as outlook. And to top it off the various races, courtesy of the British colonial policy which encouraged mass non-Malay immigration, can and are identifiable with their vocation, though not as apparent as in pre-1969 years. Thanks to the deliberate policy of social engineering to minimise identification of the races by their vocations as enunciated in the New Economic Policy, involvement of the various races in various vocations are now more widespread.

In addition to these various pieces of legislations, the Federal Constitution was amended in 1971 to provide for further restrictions. A new clause was added to Article 10 making further provisions restricting freedom of speech and expression. The new clause allows Parliament to pass laws prohibiting the questioning of any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions of the Constitution relating to:

- a) citizenship(the whole of Part III of the Constitution)
- b) the position of Malay as the national and official language with the proviso that the use (other than for official purpose), the teaching or learning of other languages shall not be prohibited(Article 152);
- c) the special position of the Malays and natives of Sabah and Sarawak and the legitimate interests of other communities(Article 153);
- d) the sovereignty, prerogatives, powers and jurisdiction of the Malay rulers(Articles 71 & 159).

These are the entrenched provisions of the Constitution. A nation's constitution performs three(3) functions:

- @ it expresses the consent by which the people actually establish the nation;
- @ it sets up a definite form of government; and
- @ it grants and at the same time limits the power which that government possesses.

Although it has been said that a Constitution is a fundamental law of a country, there are some provisions which are more basic than others, i.e. more entrenched in the Constitution. And provisions relating to citizenship, languages, special

position of the Malays and the position of the Malay rulers are those that are entrenched.

The Constitution was also amended, withdrawing parliamentary privilege for discussions relating to the four entrenched provisions in Parliament. Prior to the amendment Members of Parliament are given qualified privilege to discuss such matters in the chambers without being criminally liable under the Sedition Act. The Sedition Act was at the same time also amended to make the questioning of the four entrenched provisions liable for prosecution.

These amendments to the Constitution and the Sedition Act pertaining to the entrenched provisions were made following the outbreak of racial disturbances of May 13, 1969.

The May 13 tragedy shows how fragile race relations were in Malaysia then, even after 12 years of independence and nation building. Even today race relations are not as deep rooted as one hopes to be. There was no strong foundation for cooperation and understanding between the masses of the three major ethnic groups and whatever cooperation there is was very superficial. Such an untenable situation arose out of the legacy of the British colonialists which had never encouraged close rapport between the Malays and the non-

Malays, let alone taking positive measures to bring about assimilation of the non-Malays into the mainstream of life. There was practically no effort being initiated to inculcate among the Chinese and Indian immigrant workers, brought in by the British for the imperial power's well being, a sense of belonging to the country of their adoption. Their main preoccupation then was to earn enough to return to their mainlands or even if they were to stay, it was to continue being Chinese or Indian in a British colony to continue with their pursuit of earning their livelihood and the accumulation of wealth.

The Chinese and Indian immigrants then were regarded as transient workers and their flow or departure fluctuated with the country's economic fortunes. Mass immigration of the Chinese and Indians continued into the fourth decade of this century mainly due to the vast economic potential as well as the liberal and tolerant attitude of the Malays.

The British government then, like all colonial government, was if not totalitarian, at least authoritarian. Except for some nominees for "window dressing" the people were never represented. If the colonial government had problems, they were resolved without due regard to the feelings or interest

of the indigenous people. So when it was faced with a shortage of labour to exploit the resources of the colony, people from other countries who are culturally and ethnically alien to the indigenous were brought in. No efforts were made to integrate them. In fact they were deliberately separated in keeping with the dictum of "divide and rule".

One feature of the society then - which in fact continued even to the early years after independence - was a somewhat voluntary cultural segregation. The Malays on one hand lives in a cultural milieu that institutionally continued in a local context but there was no effort by the colonial authorities to orientate the increasing number of immigrant races towards local institutions. Or the most part, the immigrant races were administered independently and led an independent existence.

J.S. Furnivall's description of pre-war Burma and Java in "Colonial Policy and Practise" could be said to aptly describe colonial Malaya. "It is in the strictest sense a medley, for they (the various peoples) mix but do not combine. Each group holds by its own religion, its own culture and language, its own ideas and ways. As a plural

society, with different sections of the community living side by side, but separately, within the same political unit. Even in the economic sphere there is a division of labour along racial lines."

Dr. Goh Cheng Teik quoting Furnivall in his "Integration in a Plural Society" says the same medley as observed by Furnivall was very much apparant in colonial Malaya. "The Chinese mixed with the Malays, Indians and others and engaged in business and other transactions with them but they did not combine with them to create a single political community with a common sense of destiny." He further adds: "They mixed but did not combine. A common will or sense of destiny which could bind the diverse races together, was connspicuously absent."

The country then was known and recognised as the land of the Malays, "Persekutuan Tanah Melayu" and would naturally be an impediment to the non-Malays calling it their home and country. In such a situation it was natural that in the beginning it was only the Malays who were politically conscious and influenced by the post-war agitation for independence by colonies from their imperial powers. It was

not until very much later that Chinese and Indian political parties were formed to lend support to the Malays in their agitation for independence.

When the British agreed to grant independence to the Federation of Malaya it was with the condition that the non-Malays were given a chance to share power with the Malays. A Commission was set up to draw up the country's constitution after careful study and consultations with the various ethnic groups.

As Tunku Abdul Rahman, Malaysia's first Prime Minister put it: "the constitution's form and content were openly debated up and down the land at all levels of society, groups and individuals freely putting forward their views, with the final result that common understanding was reached on the Constitution as a whole, including such controversial matters as citizenship, the National Language and special consideration for the economic position of the Malays." (Page 4/5 "May 13 Before and After" - Tengku Abdul Rahman).

Fundamental among the provisions were those pertaining to the sovereignty, prerogatives, powers and jurisdiction of the Malay rulers, the position of the Malays, the National

Language, the religion of Islam which the Malays wanted to be enshrined in the Constitution. There was no difficulties in accepting these various provisions as all and sundry recognises the situation. The non-Malays wanted citizenship, assurances for the continued use and teaching of their languages and the practise of their religions.

And so these then were entrenched in the Constitution in the spirit of give and take. The entrenched provisions in the Constitutions are the result of agreement between all the communities in the country. They are the products of consultation and compromise. They represent binding arrangements between the various races and are the underpinnings on which the Constitutional structure such as fundamental liberties, the machinery of government and a score of other detailed provisions are built.

If these entrenched provisions are in any way eroded or weakened, the entire Constitutional structure is endangered and with it the existence of that nation.

It was the failure to understand, and the irresponsible and cavalier treatment of these entrenched provisions that constituted one of the primary causes of the May 13 disturbances in 1969.

It is obvious from these trade-offs, the non-Malays by the stroke of the pen gained what they most wanted - citizenship of the new Federation and with that the power to vote and to be elected as a legislator, but to the Malays though provisions were made as to their special position and guarantees of quotas in public service, for scholarships, permits or licences for trade and business, these are but just means to an end that is to help them to attain a reasonable level of participation and involvement in the economic life of the nation. In practical terms the attainment of active participation in the nation's economy is a life long struggle. It will not become a reality merely through the stroke of a pen unlike the granting of citizenship, and with it a share in the political process and power. With the sharing of political power the non-Malays attained greater political consciousness and with that they became more conscious of their state in a country they now call and regard as their own. Obviously some will question some of the provisions of the Constitution that favour the Malays as being discriminatory.

It is in this context that the development of the country and the question of fundamental rights especially those pertaining to race relations should be seen. The non-Malays having been given citizenship could enjoy all the rights and

privileges of a citizen and had then become electorates. The 1969 election then became the platform for some of them especially those in the opposition to question the various special provisions of the Malays as agreed to by all during the formative years of the nation and since enshrined in the Constitution.

The DAP (Democratic Action Party), the Gerakan (the People's Movement) and the PPP (People's Action Party) stirred up Chinese emotions and sentiments, declaring that they intend to deprive the Malays of the rights provided for them in the Constitution and asserting that they would introduce multi-lingualism in Malaysia if they were successful in the elections. "With the utmost disregard for restraint these parties hit on the raw on all these sensitive points, harping again and again, upsetting the innermost feelings of both the major races of Malaysia (see Tunku Abdul Rahman - "May 13 - Before and After"). The Tunku felt that the real intention of the Chinese chauvinists is "against the idea of being Malaysian at all. It is repugnant to them to think of themselves as anything but Chinese".

The late former Prime Minister, Tun Abdul Razak who was appointed the Director of Operations immediately following the outbreak of the violence and the proclamation of a state

of emergency had this to say in his preface to the National Operations Council Report on the May 13 Tragedy: "On that day we were jolted into a sharp realisation that the racial problem in this country is a serious one and measures taken in the past to cope with it have not proved adequate."

"Friction had always existed at the edges of the various communities, but we continued to live in the hope that the heat generated would not reach an explosive level. This faith in the good sense of every Malaysian, and our belief in the virtues of unfettered democratic processes, characterised the conduct of our affairs since Merdeka. We assumed that those who chose to participate in public life would understand the delicate realities of our society and consequently recognise the need for a certain degree of restraint and maturity in their activities."

And again: "The lesson of the recent disturbances is clear. This nation cannot afford to perpetuate a system that permits anybody to say and do things which would set one race against another. If the events of May 13 are not to occur again, if this Nation is to survive, we must make sure that subjects which ^{are} likely to endanger racial tensions are not exploited by irresponsible opportunists. We can only guarantee this by

placing such subjects beyond the reach of race demagogues, the Communists and other subversives. We need, therefore, to construct a political framework which is realistic and takes full account of the social and economic conditions of our people and which is based on an unshakable and sound foundation".

Since independence various provisions of the Constitution had been amended whilst new Acts or new provisions to existing pieces of legislation were made to restrict various liberties provided for, so as to meet new challenges and new conditions arising out of the various untoward incidents or events that had occurred. These incidents invariably have racial overtones and could be very explosive. Considering the multi-racial, multi-religious and multi-cultural composition of the population, they have the potential to be destructive and could adversely affect the general stability of the nation and with it affecting national development and the overall well being of the nation and the people.

The plurality of the Malaysian society is nothing like a country populated by people of various ethnic groups where the people are generally assimilated - that is they speak one language and adopt one culture. So to be an American, for

example, an immigrant has to speak English and is generally expected to absorb the American culture. In Malaysia, though the Malay language is established and accepted as the National and Official language, the different races need not speak the language and they continue to practise their culture. In fact until today some lawyers still question the move to have court cases conducted in Malay, with excuses that justice may not be done if cases are heard in Malay, the language of the country and a language that is already decreed the national and official language. These excuses are actually to cover up their lack of knowledge and competency in Malay and the lack of serious attempt to be competent in that language.

There is also little assimilation among the various ethnic groups and there is no homogeneity. And to top it off, whatever effort made at trying to bring about homogeneity is looked upon as efforts to Malaynise the non-Malay thereby compromising the rights guaranteed to them by the Malaysian Constitution. Yet despite such incongruousness Malaysia obtained its independence without any bloodshed and without having to face serious racially, religiously or culturally motivated riots (accept for the May 13th, 1969 racial riots in Kuala Lumpur). The country remained politically stable and its general elections had generally been peaceful. This is in

no small measure due to preventive legislative measures as well as actions taken by the authorities to nip in the bud potentially explosive situations that could adversely affect political and economic stability.

The government itself is confident that its policies aimed at reducing communal conflicts and fostering national unity - through the various pieces of legislation made - would succeed. The White Paper published by the Ministry of Home Affairs in March 1988 to explain the arrest of some people including opposition and the ruling party politicians, religious figures as well as special interest groups and the closure of three newspapers in October 1987 said there are many indications to show that the policies would succeed. It also states: "However, the process of implementing these policies itself creates various reactions which occasionally complicate efforts to foster national unity. There are quarters which are reluctant to accept the fact that in order to redress the imbalance between the races, opportunities for advancement will have to be shared by all the communities. There are also various groups which are dissatisfied with their position despite the fact that they have been provided with substantial assistance and facilities and have achieved progress. There exist too, various groups which are

apprehensive of losing their identity and cultural heritage although these matters are guaranteed and protected by the Constitution, and are respected and given due consideration in the formulation of Government policies."

It is within such a scenario and condition that the Malaysian press operates. From the legacy of their colonial and cultural heritage, the Malaysian press is also no less plural in character, for it also reflects the non-homogeneity character of peoples of the country. There are the vernacular press (in the national language) as well as the language press i.e. those published in English, Mandarin, Tamil, Punjabi. In fact in terms of actual number of dailies published there are more Mandarin language newspapers than those in vernacular or in English. Of the 41 daily newspapers, 22 are published exclusively in Mandarin. There are eight dailies in English and only four national language dailies. But in terms of sales the combined circulation of the two biggest Bahasa Malaysia (the national) dailies the Utusan Malaysia and the Berita Harian is more than the total circulation of the 22 Chinese dailies or the combined circulation of the eight English language dailies.

Among all the newspapers only the Bahasa papers and to a lesser extent the two English dailies (NST and the Star) could be considered to be national in character in the sense that they are read nation-wide and by all the difference races. But even then there are distinct differences. The Bahasa press initially caters only to the Malay readers but has now become a paper read by all communities, thanks to the Education policy of the use of Bahasa Malaysia as the medium of instruction up to tertiary level to replace English. The national language newspapers' readers are also now more urban and semi urban though the rural readership is still substantial. As such the papers also give more rural coverage.

The English language dailies also caters to a multi-racial readership, with the non Malays dominating - indicating an obvious urban bias where the majority of the non-Malays reside, and a more elitist readership bias. This is also reflected in the preponderance of coverage of the urban centres. The English language press is also circulated nationwide. Their circulation increases as a whole had not been substantial if compared to circulation increases experienced by the Malay Language press.

Readership of Mandarin newspapers are exclusively ethnic non-Chinese readership is almost non-existent and among them only the Nanyang Siang Pau, the Sin Chew Jit Poh and to a lesser extent Shin Min Daily news and Malayan Thung Pao are national in character in the sense that these four newspapers are available on sale in Sabah and Sarawak. The others are mainly localised newspapers catering mainly to the community/towns where they are published or printed. The same is true of the Tamil papers.

The provincial daily newspapers, a couple of Chinese language newspapers published in Penang nearly 20 others published in the two East Malaysian states of Sabah and Sarawak, most of which are also in Chinese, are basically community papers serving the urban centres where they are published.

The presence of such diverse language papers - there is even a Malayali and a Punjabi newspaper - do not help in the forging of a united and an integrated nation. Instead they had further enhanced differences and outlook in the people according to their racial origin, because reports and stories covered in the newspapers are invariably tailored to "what their readers want". In fact for a long time - right from the colonial days to even after independence - orientation of

the papers in terms of stories covered and given space are those not about events in the country but about events in Hong Kong or Taiwan (in the Chinese papers) and India (in the Tamil, Malayali and Punjabi papers).

It is only of late that national politics and events that happen in the country were being given prominence - in fact for quite a long while, a characteristic of the Chinese papers had been to fill their front pages with foreign news. But even in this, it is basically national politics and economy that are covered - mainly on the realisation that those developments do affect the Chinese community. As such UMNO politics, for example, do get substantial space for some years now on the assumption that anything that affect UMNO and/or its leaders will not only affect the Malays but will also affect the whole population and the nation.

The setting up of BERNAMA, the National News Agency which became operational on May 20, 1968 has to some extent been a catalyst in changing some of the characteristics of the Chinese, Tamil and the provincial newspapers. By subscribing to BERNAMA they now have access to national news, something which they do not have before. Being very small in circulation, ranging from 5,000 to just 30,000 copies, they

do not have the resources to station their own correspondents in the federal capital. But through the services of BERNAMA they now not only have excess to national news from the capital but even local news and news from the other states as well. It is within this situation the Malaysian press is being asked ~~has~~ to operate, to be alive to the diversity of the nation and to play their role in bringing about a united and integrated nation.

The Malaysian Constitution provides for the enacting of laws to further define the parameters within which freedom of speech and the press is allowed, to ensure that ^{it} ~~they~~ will act responsibly and not abuse its position. There is now in operation no less than 42 pieces of legislation and ordinance regulating the mass media in Malaysia (according to a survey by the School of Administration and Law of the Institute Technology MARA quoted by Mohd. Hamdan Adnan in June 1987 issue of "Forum Komunikasi" a bi-annual journal of the School of Mass Communication of ITM). Some of the legislation dates back to the British colonial times while others were enacted after independence. In addition some of the acts and ordinances were further amended to meet various situations and events that had occurred from time to time to further define or refine the various restrictions already imposed to

regulate a healthy environment for national development and national progress. The various pieces of legislation provides for penal consequences for any breach of their provisions.

Despite the various restrictions imposed, the Chief Justice of Malaya, Tan Sri Abdul Hamid Omar concedes: "In this country, the press enjoys a very substantial degree of freedom nevertheless subject to certain restrictions and restrains by way of legislative imposition." (Speech at the Malaysian Press Institute seminar - "The Press, the Law and the Courts" March 1987). He is also of the view that the press has a vital role to play as public watchdogs and advocates. Mindful that there could be risks of abuse when carrying out such a role he said: "It is an abuse to incite violence and crime and political and social unrest and public disorder. The government - the legislative, executive and judiciary - shall have to be protected against unlawful conduct of the press. Accordingly, freedom of speech and of the press does not comprehend the right to speak or write on any subject whatsoever at any time."

The Chief Justice, however, cautioned that "excessive

encroachments or interventions would significantly undermine this fundamental principle and render it meaningless. We all live in a society under a system of parliamentary democracy and are subject to the laws of the land. We acknowledge that there will have to be legal restraints on the freedom of an individual by means of legislative impositions which are constitutionally permissible, and which are imposed primarily in the interest of security and public order. Nonetheless, these restraints being ipso facto exceptions should be subordinate to and not prevail over the fundamental principle."

Taking all these into consideration he said: "It is incumbent upon the press, as its primary responsibility, to avoid creating a situation which compels the authorities to introduce more new laws or executive directions. A free press should not abuse by violating the trust vested in it by the public and by our Constitution. If it should fail to do so, it may mean that while it is willing to enjoy the privilege, it is not so willing to apply to itself the same standard it demands of others."

And it is within such a situation that the press in Malaysia is expected to play its role, vis-a-vis its responsibility to

the nation and the people; whether as an "informer" to report and expose violations of human rights; as a "watchdog" to monitor compliance of the accepted human rights values as well as criticising violations of those rights; or as an "advocate" to promote human rights in the nation. And within the Malaysian context, the press when playing such a role is not expected to take on an adversarial posture.

While the press have the right to inform, monitor and advocate human rights issues, it also have the responsibility to ensure continued stability within the context of the Malaysian ethnic situation. The Prime Minister, Datuk Seri Dr. Mahathir Mohamad in his address to the World Press Convention in Kuala Lumpur on Sept. 18, 1985 said the media have an important role to play and must be allowed leeway to play that role including to criticise authority.

"By and large, the role of the Press in ensuring good democratic practices and hence sustaining democracy itself is not only right but also truly indispensable. It is indeed a means of communication between a democratic government and the people. Through it not only will the people be kept informed of all that the government and its leaders are doing, but the leaders too will learn of the attitudes, needs and

problems of the people. A responsible democratic government must accordingly regard a free press as an asset which facilitates good government."

He, however, qualified this by saying freedom given to the mass media must be exercised with responsibility. "It must be given the freedom to express opinion freely, even the right to be wrong; but it must do so without prejudice and without malice. Just as in a democratic society no person or institution has the right to destroy society or to destroy democracy, the media has no such right. An irresponsible press is a negation of the right of the people in a democratic society. So long as the press is conscious of itself being a potential threat to democracy and conscientiously limits the exercise of its rights, it should be allowed to function without government interference. But when the press obviously abuses its rights, then democratic governments have a duty to put it right."

Prime Minister Dr. Mahathir further elaborates: "In representing the inevitably selected views of various groups of people and in pressing its own views, in pursuit of its perception of the public good, on those occasions when it is involved in the pursuit of the public good, the media must

act with the humility that it demands of those in power. Just as it is right in saying that a government has no monopoly on constructiveness and wisdom, the media must recognise that it too has no monopoly on constructiveness and wisdom. Just as the public servant must be prepared to accept criticism, so too must the media be prepared to accept criticism. Just as the government is not above the law, the media too is not above the law. It simply will not do if a public servant is subject to the laws on state secrets but in the name of freedom others are not. Just as the media is not to be made subservient to the executive, the legislature and the judiciary, in the same way and to the same extent the executive, the legislative and the judiciary are not to be made subservient to the media. Just as the government cannot be allowed to have the freedom to do exactly as it pleases in society, so too the media cannot be allowed to do exactly as it please in society.

Dr. Mahathir further adds: "The media must be allowed to compete in the economic marketplace and curry the favour of its target customers, but it must do so within the bounds of decency and responsibility. Contrary to what is thought in many of even the best journalistic institutions, the deadline is not sacred. The public good is sacred.. and always sacred."

Below are briefs on the specific pieces of legislation imposing the various restrictions on the press to ensure the "sacredness of the public good" prevails over the "sacredness of the deadline".

1) Penal Code

Restrictions on freedom of expression are found under sections 292, 293, 298A and sections 499 to 502.

Sections 292 and 293 deals with restrictions on indecent or immoral publication by prohibiting the distribution, exhibitions, circulation as well as importation of obscene books, pamphlets and other publications. It provides for penal consequences for contravention.

Section 298A prohibits by words either spoken or written which causes or attempts to cause disharmony, disunity, etc. on the grounds of religion.

Section 499 to 502 are offences relating to defamation. Section 499 makes it an offence for a person by words or signs publishes any imputation concerning any person intending to harm the reputation of that person. The

other sections provides for the punishment, printing or selling such printed defamatory matters.

2) Sedition Act 1948

The law provides for punishment of sedition. Though the Act do not define sedition, it defines seditious tendency as a tendency:

- a) To bring into hatred or contempt or to excite dissatisfaction 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 governed by the government the alteration, otherwise than by lawful means, of any matter as by law establishes;
- c) To bring into hatred or contempt, or to excite disaffection against the administration of justice in Malaysia or in any State;
- d) To raise discontent or disaffection amongst the subjects of the Yang di Pertuan Agong or of the Ruler of any State or amongst the inhabitants of Malaysia or of any State; or

- e) To promote feelings of ill-will and hostility between different races or classes of the population of Malaysia; or
- f) To question any matter, right, status, position, privilege, sovereignty or prerogative, established or protected by the provision of Part III (concerning citizenship) of the Federal Constitution or Article 152 (National Language), 153 (special position of the Malays), or 181 (Rulers' sovereignty) of the Federal Constitution.

Section 4 of the Act provides for penal consequences.

- 1) Any person who -
 - a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency;
 - b) utters any seditious words;
 - c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or

d) imports any seditious publication;

shall be guilty of an offence and shall, on conviction, be liable for a first offence to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or both, and, for a subsequent offence, to imprisonment for a term not exceeding five years; and any seditious publication found in the possession of the person or used in evidence at his trial shall be forfeited and may be destroyed or otherwise disposed of as the court directs.

- 2) Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and shall, on conviction, be liable for a first offence to a fine not exceeding two thousand ringgit or to imprisonment for a term not exceeding eighteen months or to both, and, for a subsequent offence, to imprisonment for a term not exceeding three years, and the publication shall be forfeited and may be destroyed or otherwise disposed of as the court directs.

Section 9 of the Act provides for the suspension of a newspaper containing seditious matter.

1) Whenever any person is convicted of publishing in any newspaper matter having a seditious tendency, the court may, if it thinks fit, either in lieu of or in addition to any other punishment, make orders as to all or any of following matters:

- a) prohibiting, either absolutely or except on conditions to be specified in the order, for the period not exceeding one year from the date of the order, the future publication of that newspaper;
- b) prohibiting, either absolutely or except on conditions to be specified in the order, for the period aforesaid, the publisher, proprietor, or editor of that newspaper for publishing, editing or writing for any newspaper, or from assisting, whether with money or money's worth, material, personal service, or otherwise in the publication, editing or production of any newspaper; and
- c) and that for the period aforesaid any printing press used in the production of the newspaper be used only on conditions to be specified in the order, or that it be seized by the police and detained by them for the period aforesaid.

- 2) Any person who contravenes an order made under this section shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding five thousand ringgit or to imprisonment for a term not exceeding three years or both.

Nothing in this Act shall affect the power of the court to punish any person contravening an order made under the section for contempt of court:

Provided that no person shall be punished twice for the same offence.

Section 10 of the Act empowers the court to prohibit circulation of seditious publications on application of the Public Prosecutor to satisfactorily show the court that issue or circulation of the seditious publication would be likely to lead to unlawful violence or appears to promote feelings of hostility between different classes or races in the community. The order can be made ex parte on application by the Public Prosecutor in chambers.

- 3) Internal Security Act 1960

The Act was enacted to provide for the internal security

of Malaysia, preventive detention, the prevention of subversion, the suppression of organised violence against persons and property. It is aimed at persons whether inside Malaysia or outside who has taken action or threaten further actions that could cause citizens to fear organised violence against persons or property or to procure alterations, otherwise than by lawful means, the lawful government of of Malaysia. The Act provides for arrest without warrant and detention pending enquiries of any person, who being questioned by a Police Officer fails to satisfy the officers as his identity and purpose of being in a place and who the officer suspects has acted or about to act in a manner prejudicial to the security of the country or to the maintenance of essential services and the economic life of the nation.

The police may also arrest and detain a person whom they have reason to believe is necessary to prevent him from acting in any manner prejudicial to the security of the country or to the maintenance of essential services and to the economic life. The person may be detained for up to 60 days without an order of detention.

The Act also provides for the Minister of Home Affairs to

issue detention order of up to two years if the Minister agrees that the person held is a potential threat to law and order. Such order can be further extended, up to two years at a time.

It also empowers the Minister to prohibit absolutely or subject to conditions the printing, publication, issue, circulation or possession of any document or publication which contain any incitement to violence or which counsels disobedience to the law or is calculated or likely to lead to a breach of the peace or to promote feelings of hostility between the different races or classes or the population or is prejudiced to the national interest, public order or security of Malaysia. Another section provides: "Any person who, by word of mouth or in writing or in any newspaper, periodical, book, circular or other printed publication or by any other means spreads false reports or makes false statements likely to cause public alarm, shall be guilty of an offence."

An Act also provides a person who without lawful excuse carries or has in his possession or under his control a subversive document shall be guilty of an offence and be liable on conviction to a fine not exceeding ten thousand

ringgit or to imprisonment for a term not exceeding five years or both. It, however, provides that no person shall be convicted of an offence if he proves to the satisfaction of the court:

- + that he was not aware of the contents or nature of the contents of the subversive document, and
- + that at no time he has reasonable cause to believe or suspect that the document was a subversive document.

The Act defines a subversive document as any having in part or in whole a tendency:

- + to excite organised violence against persons or property in Malaysia;
- + to support, propagate or advocate any act prejudicial to the security of Malaysia or the maintenance or restoration of public order therein or inciting to violence therein or counselling disobedience to the law thereof or to any lawful order therein; or,
- + to invite, request, or demand support for or on account of any collection, subscription, contribution or

donation, whether in money or in kind, for the direct or indirect benefit or use of persons who intend to act or are about to act, or have acted, in a manner prejudicial to the security of Malaysia or to the maintenance of public order therein, or who incite to violence therein or counsel disobedience to the law thereof or any lawful order therein.

The Act itself has been subject to much criticisms both internally and overseas, especially following the recent government crackdown when it detailed a total of 106 people of all walks of life from October 27 to November 14. Of these arrests up to 68 people were released prior to a detention order from the Minister. Those arrested included opposition as well as government Members of Parliament, other opposition as well as government party members and functionaries, leaders of special interest groups, members of the opposition Pan Malaysian Islamic Party, church workers as well as others.

In a White Paper entitled "Towards Preserving National Security" released on March 30 this year, the government explaining its actions including withdrawal of printing permits to four newspapers - Sin Chew Jit Poh (a Chinese

daily), the Star (an English daily), the Sunday Star (an English weekly) and the Watan (a Malay bi-weekly) - says it will "continue to act firmly and will not hesitate to take whatever steps necessary in accordance with the law to maintain peace and national security."

It further says: "The primary responsibility of the government is to ensure peace and security. The government took firm and definite measures to prevent the critical situation from further deteriorating and ending in bloodshed. The government and the people of Malaysia have no wish for a repeat of the May 13 incident in which lives were lost, properties destroyed and the national economy badly affected."

The White Paper traces events leading to the tense situation in the country in October last year and gave an account of the activities of all the parties involved which it says "led to a situation that was prejudicial to public order and national security."

"As the situation had reached a critical stage and was likely to lead to widespread rioting, the Government decided to act swiftly and firmly to contain the situation in the interests

of stability and the welfare of the people. From 27 October until 14 November, 1987, Police arrested and detained for the purpose of investigation 106 persons under section 73(1) of the Internal Security Act 1960 in connection with activities considered prejudicial to security. Assemblies and rallies were prohibited and the licences of four publications were revoked."

The White Paper, which traces events leading to the tense situation in the country in October last year, says the government acted swiftly and firmly in arresting 106 people under the Internal Security Act (ISA) as the situation at that time had reached a critical stage and was likely to lead to widespread rioting.

The White Paper, presented to Parliament, says that Malaysia, as a multi-racial, multi-religious and multi-cultural country, has been exposed to various types of security threats even before Independence.

The main threat was posed by the communists, it says, and added to this were threats particularly from racial and religious conflicts.

The communist threat gradually declined and is under control but, on the other hand, communal issues and problems continued and led to the outbreak of the May 13 clashes, the most serious among 22 racial disturbances which occurred in the country from 1945 to 1969.

The White Paper says that following that, the government intensified efforts to reduce communal conflicts and foster national unity to prevent a recurrence of the May 13 incident. However, certain quarters were reluctant to accept the fact that in order to redress the imbalance among the races opportunities for advancement would have to be shared by all communities.

Various groups were dissatisfied with their position despite the fact that they had been provided with substantial assistance and facilities and had achieved progress, it adds.

+There exist, too, various groups which are apprehensive of losing their identity and cultural heritage although these matters are guaranteed and protected by the constitution and are respected and given due consideration in the formulation of government policies, + the Paper says.

It attributes the tense situation last October mainly to the exploitation of various sensitive issues and communal sentiments by various groups, including political parties, pressure groups, the Communist Party of Malaya (CPM) and the press.

The Paper says Malaysia is also exposed to threats of a religious nature by Muslim groups seeking to establish a so-called Islamic state through violent and unconstitutional means.

+There are also Muslim groups which attempt to cause dissension among the Muslim themselves and at the same time foment hostility between followers of different faiths.+

It says although Christian churches in the country in general respect the tradition and laws prohibiting the propagation of other religions among Muslims, there existed a small group based in a church in Petaling Jaya that ignored the country's Constitution and attempted to spread Christianity among Muslims.

This activity and the unfounded allegations by leaders of PAS regarding the efforts to Christianise the Malays further aggravated the situation.

A total of 115 unlawful assemblies were organised by political parties over 1986-1987 to exploit issues which inflamed racial sentiments and where wild criticisms and allegations of a racial nature were hurled at the government.

+All these were carried by the newspapers, some of which gave coverages which deliberately exaggerated issues and pitted various parties against each other, + it adds.

These developments led to a highly tense situation last October, when a shooting incident involving a military personnel in Jalan Chow Kit here on the night of October 18 led to concern and anxiety among the people following rumours of racial disturbances breaking out in Kuala Lumpur, although the incident was not related to the communal problem.

Rumours were also circulated that a rally planned by UMNO last November 1 was aimed at precipitating another May 13 incident, causing many people to stock supplies and foodstuffs while traders planned to close their shops and markets that day. Tension was clearly high in Kuala Lumpur following the Jalan Chow Kit incident, the Paper adds.

The Paper says when the present leadership assumed office in

1981, it practised a liberal policy, as reflected by the release of most of the people detained under the ISA at the time.

Control over publications was relaxed with more publishing permits issued. Also relaxed were restrictions on assemblies and meetings in public places.

But it says this liberal and tolerant attitude was exploited in an irresponsible manner by various political parties and pressure groups for their own selfish interests.

+The ISA in particular enables the authorities to prevent any person from acting in a manner prejudicial to the security, the maintenance of essential services or the economic life of Malaysia. The enforcement of this law is therefore not restricted to the communist threat alone,+ the paper says.

Following the government actions, criticisms were hurled against the government for making arbitrary arrests in locking its critics to curb dissent rather than to combat racism. All the opposition parties - including the Democratic Action Party (DAP), Pan Malaysian Islamic Party (PAS) and the Malaysian Peoples' Socialist Party (PSRM)

who had their leaders and members among those detained - were of one voice in criticising the government for the action.

The DAP through its Acting Secretary General and Acting Parliamentary Opposition Leader, Mr. Lee Lam Thye - taking over from its leader Mr. Lim Kit Siang one of those still under detention - brought the government actions to various international organisations in Europe including Amnesty International, the Socialist International, Social Democratic Party of Germany, Parliamentary Human Rights Group of the British Parliament, the British Labour Party, the British Trade Union council and the Commonwealth Trade Union council as well as the Article 19 Association all of whom condemned the arrest and promise to put pressure against the Malaysian government to release the detainees. The DAP also plans to take on a higher profile in the international arena to campaign for the "restoration of human rights and democracy in Malaysia."

The International Commission of Jurists for example accused the Malaysian authorities of abusing the law to silence their critics under the guise of preventing racial conflict. The ICJ supported the view of the former chairman of the

Malaysian Bar Council, Param Cumaraswamy that the use of the ISA should be opposed even though some of those arrested had been "voicing extremist views."

All these criticisms notwithstanding, the ordinary people of Malaysia gave a sigh of relief when the very tense situation that was certainly becoming alarming was diffused following the government action.

The irony of all the charges levelled against the present administration of Dr. Mahathir was that prior to the recent actions, he had been described as a liberal Prime Minister and the most restraint in the use of the ISA as compared to his predecessors including Tunku Abdul Rahman and Tun Hussein Onn, his two strident critics. In fact a US State Department report to the Senate Foreign Relations Committee in 1986 praised Dr. Mahathir's human rights record since he took office in 1981. "In comparison to previous regimes, Prime Minister Mahathir's administration has been relatively restrained in its use of International Security legislation to deal with political offences" The Malaysian Bar Council in June 1986 reported that the number of detainees under the ISA had dropped to 27 compared to nearly 700 at the time when he succeeded Tun Hussein Onn. In fact during the

administrations of Tunku Abdul Rahman, the late Tun Abdul Razak and Tun Hussein Onn the number of ISA detainees hovered between 1,000 to 2,000.

Despite such unflattering track record and precedents of non-communist suspects or elements detained during the administration of Tunku Abdul Rahman and Tun Hussein Onn, both these two former Prime Ministers in support of a petition seeking the release of Dr. Chandra Muzaffar Pillay, the President of a very small and elitist but very vocal social reform group Aliran contended that the ISA was intended as a weapon against the communists only. (Dr. Ch^{ndra} has since been released eventhough his petition was denied). In his affidavit in support of the petition for writ of habeas corpus questioning the legality of the detention under the ISA, the Tunku said he and his Cabinet colleagues decided to table the ISA in Parliament in 1960 to prevent the remnants of the communist insurgents from achieving by subversive means what they had failed to gain by force of arms. He said: "the ISA was designed and meant to be used solely against the communists and their allies in order to finally overcome and prevent a repetition of the communist insurgency and subversion. My Cabinet colleagues and I gave a solemn promise to Parliament and the nation that

the immense powers given to the Government under the Internal Security Act, 1960 would never be used to stifle legitimate opposition and silence lawful dissent."

Tun Hussein Onn in his affidavit said: "From the repeated assurance given by the then leaders and my predecessors in office, Tunku Abdul Rahman, Tun Abdul Razak and Tun Dr. Ismail (a former Deputy Prime Minister), I understand that the Internal Security Act 1960 was a measure aimed at preventing the resurgence of the Communist threat to the nation.

"During my term of office as Prime Minister, I made every effort to ensure that the pledges of my predecessors, that the powers under the Internal Security Act would not be misused to curb lawful political opposition and democratic citizen activity, were respected." But it is of historical record that despite such claims the two former Prime Ministers did detain people who are neither communist sympathisers nor communist subversives.

During the hearing in November, 1987, the Attorney-General, Tan Sri Abu Talib Othman appearing for the government said that the ISA was not restricted to be applied only against

the communists or their supporters. "The ISA is necessary for the country's continued survival." He contended that ethnic and cultural diversity in the country required an uncompromising security act to maintain public order. He said the governments action in October and November, 1987 against those accused of stirring racial and religious unrest, serves as proof that Malaysia required the act and it "will be in the statute books as long as the country demands it".

He said that ISA had effectively diffused the recent racial tension and brought the country back to current situation where the people can once again breath easily. He said the ISA is a law which places the security of the nation over individual liberty. The law could be invoked upon the absolute discretion of the government or the police.

Lawyers representing Dr. Chandra and seven other detainees seeking release under writ of habeas corpus argued that the ISA was never intended by Parliament to supplant legal protection and personal liberties guaranteed under the constitution. They contended that the law was introduced as a stopgap, short-term measure to replace the legal provisions used by the former British colonialists to curb communist insurgency.

Chief Justice Abdul Hamid Omar sitting as High Court judge rejected the application ruling that the detention was legal. He said he saw no reason to consider the detention as illegal, saying that it was done "pursuit to an exercise of a valid legal power conferred by the ISA". He further held that the eight detainees had not succeeded in showing that the power exercised by the arresting officers in detaining them had been exercised mala fide (acting in bad faith), improperly or made for ulterior purpose. He held that the court could not question the sufficiency of reasons given for detention.

"Reason to believe (that a person had acted, is likely to act or about to act in a manner prejudicial to the security of the country) and the existence of grounds (for detention) were matters for the executive to decide."

4) Printing Presses Publication Act 1984

The Act aims at regulating the use of printing presses and the printing, importation, production, reproduction, publishing and distribution of publications in the country. It provides for the licensing of printing press as well as the issuance of permit to print, import, publish, sell, circulate or distribute newspapers.

Under the section on licensing of printing presses, the Act provides that no person can use a printing press (defined as printing machine that can print 1,000 or more copies in an hour) without licence issued by the Minister of Home Affairs. The Minister can grant the licence at his absolute discretion for any period specified. He may also refuse any application, and revoke or suspend the licence at any time or for any period he considers desirable. Anyone using a printing press without licence is liable upon conviction to imprisonment of three years or a fine not exceeding M\$20,000 or both. Those granted the licence are prohibited from printing material considered obscene or against public decency or containing matters inciting violence, disobedience to law or lawful order that could lead to a breach of peace or promote feelings of ill-will, hostility, enmity, hatred, disharmony or disunity. A licence holder contravening this provision is liable on conviction to imprisonment not exceeding three years or a fine of M\$20,000 or both and have his printing press forfeited.

Under the section on permit to publish a newspaper, the Act provides that no person shall print, import, publish, sell, circulate or distribute, or offer to publish, sell, circulate or distributem, any newspaper printed in Malaysia or

Singapore without a permit. Anyone contravening this provision is also liable for prosecution and be jailed for up to three years or fine up to M\$20,000 or both upon conviction. Another provision gives the Minister of Home Affairs absolute discretion to give the permit or to revoke or suspend the permit at any time for any period he considers desirable.

The Act also provides for the control of "undesirable" publication by giving the Minister discretionary power to prohibit absolutely or subject to certain conditions the printing, importation, production, reproduction, publishing, sale, issue, circulation, distribution or possession of any publication found to contain any article, caricature, photograph, report, etc. that is prejudicial to public order, morality, security, those likely to be prejudicial to public or national interest.

In the case of foreign publications, the Minister is empowered to prohibit importation into Malaysia or withhold delivery or return to sender any publication which contains material that is likely to be prejudicial to public order, morality, security, or which is likely to be contrary to any law or is otherwise prejudicial or is likely to be

prejudicial to public interest or national interest.

This law when tabled in Parliament drew sharp criticisms from a number of organisations as well as newspapers and journalist organisations contending that it strengthened the government grip over both local and foreign publications.

The Act provide for compulsory deposits for local and foreign publishers and enables the Home Affairs Minister to face forfeiture the deposits if publishers fail to attend court action brought against them for contravening the various provisions of the Act.

This law was further tightened in December following government action to diffuse a potential racial disturbance. Dr. Mahathir when tabling the amendment bill said it was aimed at updating a number of provisions of the Act to make it more "effective in meeting the objectives of overseeing the use of printing presses and publications in the context of public order and national interest."

The amendments include provisions:

- + do away with the concept of renewability of a printing permit and a publishing licence. With this printers

and publishers need to apply afresh everytime their permits and licences expire;

- + empowering the Minister to ban a publication for carrying material likely to alarm public opinion;
- + future publication of the publisher could also be banned for containing materials prejudicial to public order...etc this enables the Minister to ban a publication for containing provocative matters;
- + making publishing of untrue reports and with bad intentions an offence. It provides: where in any publication there is maliciously published any false news, the printer, publisher, editor and the writer shall be guilty of an offence and shall on conviction be liable to imprisonment for a term not exceeding three years or to a fine not exceeding M\$20,000 or both. Malice would be presumed in default of evidence showing that prior to publication the accused took reasonable measures to verify the truth of the news. Prosecution for the contravention of this provision could only be initiated with the consent in writing by the Public Prosecutor;

- + empowering the court to suspend publication for a period up to six month if those involved in the publication had been found guilty of offences relating to whatever was carried by the publication;
- + giving the Minister a final say in rejecting application for permits or licences or revoking or suspending a licence or permit and that decision cannot be questioned by the court.

The Prime Minister when tabling the amendments before Parliament on December 4 last year said absolute power is given to the Minister in rejecting permit/licence application or revoking or suspending a permit or licence because in most cases "information given to him if made public might jeopardise national security and interest."

These amendments as expected drew sharp criticisms from various quarters especially the opposition parties and some journalists associations who felt that the tightening of the Act had crushed further press freedom. But some analysts said the amendments reflected a deep fear within the government that shoddy journalism ^ucould trigger racial conflagration.

There are those who contended that journalists should not be unduly worried if they adhere to journalistic principles of upholding the truth in their reports. They said that only journalist who maliciously write false reports would be liable. And even then if he could prove that he had taken reasonable care to verify the veracity of what he writes, then he should not worry.

5) The Official Secrets Act 1972

The Act was enacted to protect official secrets for the purpose of maintaining the safety of the security of the country. It was widely felt that the necessity of such law was universally accepted but amendments made in December 1986 providing for mandatory one year imprisonment sentences for breaches of various provisions relating to disclosures of "official secrets" drew a lot of criticisms not just from the press but other erstwhile critics of the government including politicians and members of the legal profession. Criticisms against the amendments were so strong and widespread thanks to the daily barrage of adverse comments in the press and representations by the press itself that the government for while withdrew the Bill after tabling it for first reading in the Dewan Rakyat in early 1986. It tabled the Bill again in

October after a review to incorporate definition of official secret, thereby specifying types of documents that come within the definition of official secret.

Official secret was then defined as:

- + Cabinet documents, records of decisions and deliberations including those of State Executive Council committees;
- + Documents concerning relations between Federal and State governments;
- + Documents concerning national security, defence and international relations;
- + Documents in the nature of or relating to opinion, advice or recommendation concerning the operation and functions of the government;
- + Documents concerning national economy such as relating to currency, budget proposals and foreign investment; and

- + Documents concerning tender in respect of any official purchase, requisition for works, supplies, services and projects.

With the definition it had narrowed down the jurisdiction of the Act.

A new section was also introduced giving the relevant Minister the power to add, delete or amend list of documents defined as official secrets.

At the height of the protests a senior Government Minister had explained to a press delegation that it was not the government's intention to stem the flow of official information to the people, rather the government was only protecting information that can threaten the nation's security and economy.

Protests and opinions against the amendments continued to be given wide coverage by the press. The National Union of Journalists questioned the wide power given to a Minister to impose secrecy which could not be checked by the court. It also continued to question the wisdom of imposing the minimum of one year's mandatory jail sentence on offenders.

Special interest groups called on the government to withdraw the OSA and instead have a Freedom of Information Act. Others and including some academics express fear research work would be hampered by lack of information from the government. Still others fear that certain studies undertaken by the government would not be made public if the findings adversely affect the government. The Environmental Protection Society of Malaysia said certain vital information and data on pollution could be suppressed and the people would suffer.

The final amendment passed in Parliament in December was actually the third attempt following withdrawal of two earlier amendments because of strong objections aired by the press. Dr. Mahathir when moving the bill gave an assurance that the government would apply the law fairly and justly saying that only five people had actually been charged under the OSA in 29 years since its inception.

He said the Act that was in force before the amendment was too wide and with the amendment secret document were categorised. He conceded difficulty over classification of secret documents because certain thing which is secret at one time could not be kept secret at another time. As such

provision were made to allow for declassification of secret documents.

Dr. Mahathir answering critics over the mandatory jail sentence said: only a custodial sentence can prove a deterrent to those who leak government secrets. When government contracts worth hundreds or thousands of millions of dollars, "fines become meaningless where those who leak secrets can get a lot of money - much more than the fine itself - and the fine is paid by the people who benefited from the leakage."

6) Broadcasting Act 1987

This Act which has just come into operation empowers the Minister of Information to control and monitor all radio and television broadcast materials as well as revoke the licence of any private broadcasting company violating the Act.

The Act also provides for a maximum M\$100,000 fine and jail term of up to three years for unlicensed broadcasting. And anyone found guilty of installing, operating or dealing in radio and TV broadcast receivers without a licence is liable to be fined up to M\$3,000 and jailed up to a year.

The government when tabling the bill for Parliament's approval in December last year said the Act was deemed necessary to control broadcasting activities including broadcasting materials in the light of government's approval to a commercial tv station - TV3 and consideration by the Ministry to approve a number of private radio stations. Until the setting up of TV3, radio and tv broadcast had been a government monopoly.

Before the promulgation of the Broadcasting Act control of broadcasting was exercised by the Government through the Telecommunications Act 1950 which covers use and operation of telecommunications systems involving hardware in communications technology.

The Broadcasting Act empowers the Minister of Information to ensure broadcasting activities were carried out in accordance with government stipulations to help create a Malaysian culture and a united, stable society loyal to King and country. The Minister when tabling the bill said many materials from the West contain elements that could pollute Malaysian cultural values and the Malaysian society. He said control and supervision had to be carried out in full understanding of the national development philosophy and policies.

Despite all the various pieces of legislation now in force to regulate orderly conduct of the mass media, newspapers continue to carry out the role expected of them to educate and inform their readers of various developments and events taking place whether in their own vicinity, nationally or internationally. The newspapers continue to carry various viewpoints for or against the government. Opposition leaders and the dissenters continue to be given space in the newspapers. Violations against the rights of the people and violations against the legitimate rights of the individual by the authorities, other individuals or groups that occur in varying degrees do get to be reported in the press.

And despite charges that the present leadership is intolerant of criticisms, newspapers continue to carry criticisms against the leadership, even by former Prime Ministers,, a far cry from the situation prevailing during the tenure of those previous Prime Ministers. This could be seen from the extensive coverage, comments and criticisms against various pieces of legislation deemed as further infringing upon the already diminished freedom accorded the press.

Books highly critical of the leadership continue to be published and sold freely to the people. This was not so

during the leadership of Tunku Abdul Rahman who banned a book critical of him written by Dr. Mahathir. The Tunku also subsequently expelled Dr. Mahathir from UMNO the ruling party in 1969.

The newspapers continue to give extensive coverage to various human rights issues including violations by the authorities or others. There are two schools of thoughts in this. One school felt that all the various pieces of legislation regulating the orderly conduct of the press - especially in terms of not bringing about communal antagonism that could compromise public order and a national security - is not all that harsh. It will also not kill people's inventiveness but will certainly put pay to sensational journalism that could adversely affect public order and national stability. The various pieces of legislation do not prevent a journalist from writing the truth, however, unpalatable that news item could be to the authorities. The various rules and regulations would in fact ensure the journalist to be more professional and be accountable for his actions.

The other school is of the view that the press had been muzzled and cowed from carrying out its role as the fourth estate, to be the watchdog of the other three estates in a democracy country - is the legislative, the executive and the

judiciary. This school is of the view that journalists have now become more cautious in their coverage so much so that newspapers have become no more than government propaganda sheets.

A number of public interest groups and opposition politicians felt that there is need to press the government to review the many pieces of legislation especially the Official Secrets Act and the Printing Presses and Publications Act to ensure a healthy development of the press in Malaysia so that they can be freer and more dynamic. This would ensure that the media will serve public interest more rather than the media's own interest or government interest.

The Malaysian press do give extensive coverage to violations of the people's political and civil rights. One is through coverage of cases brought to court, both criminal and civil cases. Most of the daily papers devote one entire page daily to coverage of court proceedings. Through such coverage, where the court is being sought to protect the rights of individuals against another individual and the individual against authority, it is actually educating the public that they have the rights and the rights could be obtained from the courts.

The newspapers in covering the courts are actually playing an integral role in the administration of justice. In criminal proceedings, one of the principal objective of prosecution is to punish the offender not only with a view to deterring him, but to act as a general deterrent on others from committing a crime. "Wide publicity given to a judicial proceedings not only help to propagate the concept of deterrence, but enlighten and educate the public of their civil rights and educate them in criminal law," so said a judge. Chief Justice Abdul Hamid Omar says: "The Press retains a central position because of its unique capacity for serving as a focus of public opinion and in shaping attitudes in highlighting instances of injustices."

Quite apart from civil and political rights, an individual also expects rights to fulfilment of his basic needs including food and shelter, health and education - that is to be afforded opportunity to lead a decent life. And in this the press is also playing a major role in reporting cases of the plight of people who in one way or another, or for one reason or another is denied such opportunities. The daily newspapers provide big space for the people to air their grievances whether against the authority, the bureaucracy and officialdom, private organisations or the commercial sector.

Daily pages are provided where anyone can phone in their grievances and get answers or remedies. These are columns like 'Hotline' in the Malay Mail, 'Actionline' in the New Straits Times, 'Khidmat Utusan Malaysia' (Utusan Malays service).

The plight of the ordinary people and even those in village are taken up by the newspapers and the authorities take notice of their grievances and undertakes remedial measures. BERNAMA, for example, sends out its reporters periodically to various depressed areas in various parts of the country including the remote areas to report on actual living conditions faced by people living in those parts. Areas covered include living conditions, amenities, health and education and their livelihood.

Quite apart from this various forms of exploitation of the people whether by individuals or groups are also highlighted. The press also work closely with various consumer organisation to report on exploitation of the consumers by trades people and others.

The government itself ensures such protection is made available through various pieces of legislation already in

force. Some of these include:

The Trade Descriptions Act 1972 to make provisions prohibiting misdescription of goods provided in the course of trade, false or misleading indications as to price of goods as well as the advertising of such goods;

Weights and Measures Act 1972 establishing units of measurement and standards of mass and measure based on the International Systems of Units to regulate weights and measures and instruments for weighing and measuring for use for trade to ensure consumers are not short changed when making purchases;

Hire-Purchase Act 1967 regulating the form and content of hire-purchase agreements as well as rights and duties of the parties to such agreements. This is again another piece of legislation ensuring protection of the consumer;

Others include Children and Young Persons Act 1947 to provide for the protection of children against various abuses, Married Women and Children (Maintenance) Act 1950 which provides for the maintenance of wives and

children. Sale of Food and Drug (Amendment) Act 1972, Control of Supplies Act, and Price Control Act, Cheap Sales Regulations among others.

There is thus no dearth of legislation to protect the people the consumers from various forms of exploitation. And the press has been in the forefront to not only ensuring the people really gets the protection afforded them but explaining to them their rights as provided for in the various pieces of legislation. This role the press must continue to exercise for the public good.

AHMAD REJAL ARBEE,
KUALA LUMPUR.