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Communication And The Law In Malaysia

By

Mohd Hamdan Hj Adnan
COMMUNICATION AND THE LAW IN MALAYSIA

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Laws affecting communication in Malaysia can be considered numerous if not comprehensive. Communication, whether interpersonal or through the mass media, is regulated by Article 10 of the federal constitution of Malaysia and more than 45 laws (see Appendix) with a wide range of penalties including detention without trial.

Nevertheless, the Malaysian Federal Constitution guarantees the freedom of speech and expression, implying the freedom to communicate freely or freedom of the press and the other mass media. In Part II of the Federal Constitution, under Fundamental Liberties, Article 10 states: Citizens are accorded freedom of speech, assembly and association.

However, these freedoms are subjected to clause (2)(3) and (4). "Clauses (2)(3) and (4), as mentioned in clause (1), deal with the prerogative of Parliament to enact laws and impose restrictions if it thinks necessary to limit the freedoms of guarantee in order to protect and maintain the security and well being of the nation".

"Clause (2)(a) provides that Parliament may by law impose on the rights conferred by clause (1)(a) (i.e., the freedom of speech and expression) such restrictions as it deems necessary or expedient in the interest of the security of the Federation or any part thereof, friendly relations with other countries, public order and morality and restriction designed to protect the privileges of Parliament or any Legislative Assembly or provide against contempt of court, defamation, or excitement to any offence."

Paragraphs (b) and (c) of Clause (2) and also Clause (3), refer to more or less the same authority given to Parliament to impose restrictions on the rights conferred by Clause (1) paragraphs (b) and (c) (i.e., the right to assembly and the right to form associations).

"Clause (4) of the same article (10) says: "In imposing restrictions in the interest of the security of the Federation or any part thereof or public order under Clause (2)(a), Parliament may pass laws prohibiting the questioning of any matter, right, status, position, privilege, sovereignty or prerogative established or protected by the provisions"
of Part III, Article 152, 153 or 181 otherwise than in relation to the
implementation thereof as may be specified in such law”.

Briefly, Part III concerns citizenship. Article 152 says that the
Malay language is the official language of the country. Article 153
concerns the privileges of Malays and busiputras and the legitimate
interests of the other races. And, Article 181 concerns the Rulers’
sovereignty' . (So You Want To Be A Journalist? Mansor Ahmad Saman)

"The Constitution (Amendment) Act, 1971, effective from March 10,
1971, makes it seditious or criminal for any one questioning "Sensitive
Issues" namely rights and privileges, etc., established or protected by
those constitutional provisions relating to citizenship, to the national
language and the use of other languages for non-official purposes, to
quotas for Malays and natives of Borneo and the protection of the
legitimate interests of the other communities and to the sovereignty of
the Rulers". (Information Malaysia 1984).

To date, the Malaysian Parliament has enacted and amended several
laws pertaining to communication or flow of information. These laws
impose and limit to a certain extent, directly and indirectly, communication or me
for
freedom in Malaysia. The necessity/ these new laws or amendments is explained
in terms of national security and national unity.

Some of the laws pertaining to media practices go back to the British
era, notably the Printing Presses Act, 1948 and with various amendments as
well as the introduction of new laws to date ensuring that the mass communi-
cation in Malaysia do not injure "national security".

Further, when tabling the amendments to the Printing Presses and Publications
Act 1984 in early December 1987, Prime Minister Dato’o Perle Dr. Mahathir said
it was essential for the powers of the executive in the Act to be made clear
in writing and, "The amendment becomes even more necessary in view of the
tendency among certain circles to resort to the unwritten law to obstruct
the functions of the government".

The Prime Minister said the unwritten law is too general and in certain
cases could be interpreted according to the likings of the interpreters.
themselves. He stressed that Malaysia cannot afford to rely on unwritten laws such as English Common Law, natural justice and judicial review which originated from the customs of the English people, and these were constantly changing and varied according to the likings of the interpreters.

Datuk Seri Dr Mahathir Mohd pointed out that the written law will help ensure the Government will not act arbitrarily and beyond limits because the written laws will say what it can do and what it cannot do. Laws therefore pertaining to communication have become more "comprehensive" by amendments or by new legislations under his administration.

Laws relating to communication in Malaysia range from Indecent Advertisements Ordinance 1953, which regulates advertisements in the mass media, to the Printing Presses and Publications Act 1984, amendment 1987, which specifically determines the behaviour of the print media in the country. Also, there are laws such as the Official Secrets Act (OSA) and the General Order to punish government officials who leak official secrets. There are also laws penalising anyone publishing materials construed as detrimental to national interest, such as the Internal Security Act (ISA) and the Sedition Act. Further, there are laws that uphold Parliamentary Privileges and castigate anyone in contempt of the court. Also, there are laws that pertain for libel and slander, i.e. the Defamation Act and so on.

1. PRINTING PRESSES AND PUBLICATION ACT 1984 (AMENDED 1987)

The Printing Presses and Publication Acts 1984, amended in December 1987 severely controls and regulates mass communication, especially the print media in Malaysia. This Act which became effective on September 1, 1984 replaced the Printing Presses Act 1948 and the Imported Publications Control Act 1958. It strengthens government grip over both foreign and local publications, already tightly controlled by the Printing Presses Act, 1948, and the Control of Foreign Publication Act, 1958. With this Act, not only will compulsory deposits for foreign and local publishers alike be authorised under it, but the Home Affairs Minister will be able to force forfeiture of these if publishers fail to attend any Malaysian court action brought against them. The Act further stipulates that Malaysian investment in newspapers should be more than those held by non-citizens.
Critics of this Act have said that the Act discarded the safeguards existing in the two repealed acts. According to the Far Eastern Economic Review (5.5.85) the major changes include:

1. All-encompassing definitions of what constitutes a publication
2. Wider ministerial and official powers to monitor infringements.
3. Establishment of differing validity periods for permits to print or import publications.
4. Increasing penalties for offences from M$500 or M$1,000 fines and/or one-year maximum prison terms to M$20,000 fines and/or up to three years in jail.
5. Removes a provision in the discarded laws enabling media people to appeal to the Yang DiPertuan Agung or King, under the Act, "The Minister shall have the absolute discretion to refuse an application for a licence or permit or the renewal thereof".

"A University of Malaya economist associated with Nadi Insan, Jomo Kwek-Sundaram, said the most obvious problem with the Act is the lack of appeal rights". One gets the sense of overkill because our print media already is solidly under statutory control and, moreover, under the ownership of publishers with links to the constituent parties of the ruling coalition", he said, but added: "As far as I am concerned, there is too much disinformation about Malaysia in the foreign press". The government should look at reasons why Malaysians read the foreign press, he said. Suggesting as one reason why Malaysians read the foreign press, he said that "They suspect that self-censorship permeates the local press".

(FEER - 5/5/85)

Nevertheless, it is important to discuss the conditions for a permit to maintain a printing press, conditions for permit to publish and fees for licences, and permits in order to understand better the Printing Presses and Publications Act (1984).
CONDITIONS OF PRINTING PRESS LICENCE

1. This licence shall be conspicuously displayed at the premises where the printing press is kept/used.

2. The address at which the printing press is kept or used shall not be changed unless the approval of the Minister is obtained.

3. The licence holder shall be fully responsible for all materials printed by him.

4. The printing press shall not be used to print any publications which is prejudicial to public order, morality, security, the relationship with any foreign country or government, or which is likely to be contrary to any law or is otherwise prejudicial to or is likely to be prejudicial to the public interest or the national interest.

5. This licence shall not be, in any manner, transferred, assigned or otherwise placed under the control of any person other than the licence holder without the prior permission of the Minister of Home Affairs.

6. i) Where the holder is a partnership, the partners shall not be changed without the prior consent of the Minister.

   ii) Where the licence holder is a company, no directors shall be changed without the prior consent of the Minister.

7. The licence holder is required to comply with and not to contravene any directive from time to time issued by the Minister of Home Affairs.

8. The conditions of this licence may be amended at any time by notification in writing by the Minister of Home Affairs to the licence holder.

CONDITIONS OF PUBLICATION PERMIT (MALAYSIA)

1. The permit number shall be printed immediately below the title of the newspaper.

2. Eight copies of every issue and edition of the newspaper shall be delivered to the Ministry of Home Affairs immediately after it is printed.
3. The major part of the contents of the newspaper shall be limited to the affairs of Malaysia.

4. The format of the newspaper shall comply with the sample/mockup that has been submitted together with the application for this permit.

5. The scope and contents of the newspaper shall be restricted to those specified in permit.

6. The newspaper shall not publish any material, photograph, article or other matter which is prejudicial to public order, morality, security, the relationship with any foreign country or government, or which is likely to be contrary to any law or is otherwise, to or is likely to be prejudicial to the public interest or the national interest.

7. The newspaper shall not in any manner misrepresent facts relating to incidents of public order and security occurring in Malaysia.

8. The permit shall not in any manner be transferred, assigned or otherwise placed under the control of any person than the permit holder without the prior permission of the Minister of Home Affairs.

9. i) Where the permit holder is a partnership, the partners shall not be changed without the prior consent of the Minister.

   ii) Where the permit holder is a company, no directors shall be changed without the prior consent of the Minister.

10. The permit holder shall notify the Minister of Home Affairs of any change of members of the Editorial Board or any change in the shareholding of the company which affects the power to direct the management and policy of the company.

11. The permit holder is required to comply with and not to contravene any directive from time to time issued by the Minister of Home Affairs.

12. The conditions of this permit may be amended at any time by notification in writing by the Minister of Home Affairs to the permit holder.

The Act further stipulates that commercial printers who own machines capable of making 1,000 or more prints per hour will have to pay M$500 annually to obtain licences. Also, printing firms have to pay M$300 licensing fee for each additional branch or printing premises.
Further, licencing fees for publication permits are based on frequencies. It charges M$1,000 for daily newspapers and magazines, M$2,000 for those published 5 to 6 times weekly, M$1,000 for 2 to 4 times weekly, M$800 for weekly, M$600 for 2 to 3 times monthly, M$400 for monthly and M$300 less than once monthly. Separate payments for permits have to be made by those who have regular Sunday editions.

Fifty ringgit are levied annually for publications of organisations such as unions, cooperatives, student bodies and even commercial firms. However, its contents are restricted to welfare and social activities of members only.

Also, the Act stipulates that all cassette tapes and records with sound recording produced and distributed have the names of the producers clearly printed on them. This should be printed on every cassette tapes, records or on its covers. The regulations for cassette tapes and records are aimed at, among others, checking piracy.

Anyone contravening the Act by publishing magazines or newspapers or using printing machines without licences and found guilty could be fined not more than M$2,000 or jailed not more than three or both. Simultaneously, their printing machines can be seized even if their owners won their cases in court.

The Ministry of Home Affairs has an Enforcement Division to ensure that provisions in the Printing Presses and Publications Act, 1984, are strictly adhered to. Any police officer may arrest without warrant any person found committing or reasonably suspected of committing or abetting any one to commit any offence under this Act. Also, any authorised officer may detain, open and examine any package or article which is suspected to contravene the Act.

Further the Ministry provides a list of offensive books to book sellers and distributors in the country. As such they cannot claim they are unaware of the Ministry’s directive.
As the first action expressly authorised under the Act, three audio cassette tapes were banned: two contain speeches of Indonesian Islamic oppositionist Abdul Djaelani and the third entitled "Expression of Religious Teachers and of Islam in Indonesia". In the same order, two books written by Americans were also banned: "A Christian Response to Islam" by William M. Miller and "Think and Grow Rich" by Napoleon Hill.

To date over 88 publications are banned under the Act.

Further, according to the Home Ministry in a reply to a question in Parliament said his Ministry had cancelled the permits of four newspapers in 1986, namely Sumi, Mingguan Tanah Air, Gema Mujahiddin and Mingguan Wanita.

Also, the Home Ministry reported that a total of 16,772 pornographic books and books with contents against the country's established values were seized. He said the books were under 18 titles and all were written in Bahasa Malaysia.

The Star, Watan and Sin Chew Jit Poh permits were withdrawn in October 1987 by the Home Ministry because the Ministry felt the three newspapers were contributing toward national unrest.

The 1987 amendments to the Printing Presses And Publication Act 1984 granted absolute power to the Home Minister to prohibit and control the publication and distribution of materials deemed likely to create public unrest, to be prejudicial to security and is against public interest and morality. The rationale for granting absolute power to the Minister is because often the information communicated to him will jeopardise security and national interest if disclosed to the public. It was also reasoned out that if such cases are tried openly, the court will inevitably become a political arena. Also, it was explained that the amendments are aimed at encouraging the press to be more reasonable in its reporting.

Hence, some of the important provisions in the Act include:

1. Making false reporting with malicious intent an offence: If found guilty, the printer, publisher, editor and writer of the report is liable to a prison term of not more than three years or fine of not more than $20,000 or both.
2. Empowering the court, at the request of the Public Prosecutor to suspend any publication carrying malicious reports for not more than six months.

3. Enabling the Home Minister to prohibit the printing, sale, importation, distribution or possession of a publication which contains provocative material and reports that are deemed to unrest among the public or that are likely to alarm public opinion.

4. Providing power to the court to further suspend the publication pending a decision on the appeal against the conviction.

5. Empowering appointed officer to stop the delivery of undesirable publication while awaiting the Minister's decision.

6. Making the decision of the Home Minister as final and cannot be challenged in court.

7. Abolishing the concept of renewing printing licence; the period of the permit is stipulated in the licence and its holder is required to renew it when the term expires. Publishers have to apply for new publishing permits annually.

INTERNAL SECURITY ACT, 1960 (NO. 18 OF 1960)

Another law that would encourage people in communication to keep on the 'right' track is "The Internal Security Act, or more known as the ISA. This Act, which has been enacted pursuant to Article 149 of the Constitution to provide for the internal security of the Federation, makes special provisions relating to subversive publications. The Minister of Home Affairs is empowered to prohibit the printing, publication, sale, issue, circulation or possession of any document or publication which appears to him to contain material that is harmful to the security or public order or to incite violence, to cause disobedience to the law or to any lawful order, to be calculated or likely to lend to a breach of the peace, or to promote feelings of hostility between different races or classes of the population or to be prejudicial to the nation or public order or security of the Federation."
Further, Section 28 of the ISA, states, "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...." Under ISA, it is also an offence to possess
subversive documents. A subversive document is defined as any document
having in part or in whole a tendency:

a) to excite organised violence against persons or property in
the Federation;

b) to support, propagate or advocate any act prejudicial to the
security of the Federation or the maintenance or restoration
of public order therein or counselling disobedience to the law
thereof or to any lawful order therein; or

c) 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 the Federation 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.

However, the owner or agent in Malaysia of any publication which has
been prohibited may make an objection to such order to the Yang di Pertuan
Agong whose decision shall be final and shall not be called in question in
any court.

Nevertheless, any person who prints, publishes, sells, issues,
circulates or reproduces a document or publication which is prohibited
is guilty of an offence; and so is a person who is found in possession
of or who imports such a document.

Also guilty of an offence is any person who posts or distributes
any placard, circular or other document containing any incitement to
violence or counselling disobedience to the law or to any lawful order
or likely to lead to a breach of the peace.
Further, it is made an offence for 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 false statements likely to cause public alarm. The restriction on speech and expression is very broad. Apparently, however, the provision is applied regardless of the accused’s knowledge of the falsity of the report and regardless of the guilt or innocence of his or her intent in spreading the report. The term "likely to cause alarm" is highly subjective and not actual public alarm is required. A newspaper reporter has, for example, found himself charged under these provisions for misreporting a meeting of governmental, military and political officials concerned with not very exceptional incidents including incidents involving civilians and military persons billeted near the town.

The Home Minister is also given power to control entertainments and exhibitions and may by order prohibit the holding of or may direct the closing of any entertainment or exhibition if he is satisfied that such entertainment or exhibition is or is likely to be detrimental to the national interest.

ISA enforcement is not conducted by means of normal court procedures. Usually, no public charges against the accused is made. The accused may be held for 60 days before any charge is placed. Then the case is heard by a special board, after which the accused may be placed in confinement for up to two years, after which it may be renewed. Cases are reviewed by an advisory board at least every six months, but this often considered as a mere formality.

Two journalists were held under the ISA in 1976: Berita Harian deputy editor Samani Amin, for 15 months and New Straits Times Press managing editor Samad Ismail.

An ISA case relating to media is the trial of Socialist Democratic Party (SDP) secretary-general Fan Yew Teng and two others for publishing a book containing banned documents. Fan, 43, is charged under the ISA for publishing a book titled, Oppressors and Apologists, which purportedly contained a prohibited document entitled Trojan Donkeys in Malaysia.
Another ISA case pertaining to media is the banning of cassette tape entitled Syahid II Lubok Merbau containing a speech by a legal advisor of a political party (PAS) under the Internal Security Order (Prohibition of Publications) (No 4) 1985, Internal Security Act 1960.

It is also reported that the "Government will ban all publication, sale and possession of books on the Baling incident". As the "Government considers the incident a sensitive issue and does not want the public to be influenced or confused by the allegations of opposition parties who want to make political capital out of it...." (NST, 10/10/85). In the November 19, Baling Incident 18 policemen and civilians were killed in a clash when police attempted to arrest a religious teacher who was protected by his followers which included women and children.

SEDITION ACT, 1948 (AMENDED 1970)

Another law which has tremendous impact on all kinds of communication in Malaysia is the Sedition Act, 1948, amended in 1970. The Sedition Ordinance, 1948 was significantly amended following race riots in 1969. It forbids public discussion of certain issues that could arouse communal sentiments. As such, though a few clauses are geared specifically to the mass media, the Act specifically prohibits six kinds of acts which have seditious tendency, defined as follows:

a) to bring into hatred or contempt or to excite disaffection against any Ruler or against the Government of Malaysia or any State in Malaysia;

b) to excite the subjects of any Ruler or the inhabitants of any territory governed by any such Government to attempt to procure in the territory of the Ruler or governed by the Government, the alteration, otherwise than by lawful means of any matter as by law established;

c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Malaysia or in any states;
d) to raise discontent or disaffection among the subjects of the Yang di Pertuan Agong or of the Ruler of any State or amongst the inhabitants of Malaysia or in any State;

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 provisions of Part III of the Federal Constitution or Article 152, 153 or 181 of the Constitution.

It is provided that an act, speech, words, publication or other thing shall not be deemed to be seditions by reason only that has a tendency —

a) to show that any Ruler has been misled or mistaken in any of this measures;

b) to point out any errors or defects in any Government or Constitution as by law established (except in respect of 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 Constitution, otherwise than in relation to the implementation of any provision relating thereto) or in legislation or in the administration of justice with a view to the remedying of the errors or defects;

c) except in respect of any such matter, right, status, position, privilege, sovereignty or prerogative:
   1) to persuade the subjects of any Ruler or the inhabitants of any territory governed by any Government to attempt to procure by lawful means the alteration of any matter in the territory of such Government as by law established;
   11) to point out with a view to their removal, any matters producing or having a tendency to produce feelings of ill-will and enmity between different races or classes of the population of the Federation;

if the act, speech, words, publication or other thing has not otherwise in fact a seditious tendency.
If the seditious matter has appeared in a newspaper, the future publication of the newspaper may be absolutely prohibited up to the period of one year; and the publisher, proprietor or editor may for the same period be barred from "publishing, editing or writing for any newspaper or from assisting, whether with money or money's wealth, material, personal service or otherwise in the publication, editing or publication of a newspaper; and any printing press used in the seditious publication may be seized and detained for the same period. A court may also prohibit the issue and circulation of a seditious publication, if of the opinion that it would be likely to lead to unlawful violence or appears to have the object of promoting feelings of hostility between different classes or races of the community.

The breadth of the provisions in the Sedition Act has been shown in two cases. In P.P. v. Ooi Kee Siak, Mr Justice Raja Azlan Shah held that a speech made by Dr Ooi Kee Siak, which was later published in the "Rocket" was seditious as it accused the Government of gross impartiality in favour of the Malays and was "calculated to inspire feelings of enmity and disaffection among the people of this country". Mr Justice Raja Azlan Shah said:

"The right to freedom of speech is simply the right which everyone has to say, write or publish what he pleases so long as he does not commit a breach of the law. If he says or publishes anything expressive of a seditious tendency he is guilty of sedition. The Government has a right to preserve public peace and order, and therefore, has a good right to prohibit the propagation of opinion which has a seditious tendency. Any Government which acts against sedition has to meet the criticism that it is seeking to protect itself and keep itself in power. Whether such criticism is justified or not, is, in our system of Government, a matter upon which, in my opinion, Parliament and the people, and not the courts should pass judgement. Therefore, a meaningful understanding of the right to freedom of speech under the Constitution must be based on the realities of our contemporary society in Malaysia by striking a balance of the individual interest against the general security or the general morals or the existing political and cultural institutions. Our sedition law would not necessarily be apt for other people but we ought always to remember that it is a law which suits our temperament.

A line must therefore be drawn between the right to freedom of speech and sedition. In this country, the court draws the line. The question arises: where is the line to be drawn, when does free political criticism end
and sedition begin? In my view, the right to free speech ceases at the point where it comes within the mischief of section 3 of the Sedition Act. The dividing line between lawful criticism of Government and sedition is this – if upon reading the impugned speech as a whole the court finds that it was intended to be a criticism of Government policy or of administration with a view to obtaining its change or reform, the speech is safe. But if the court comes to the conclusion that the speech used naturally, clearly and indubitably, has the tendency of stirring up hatred, contempt or disaffection against the Government, then it is caught within the ban of paragraph (a) of section 3(1) of the Act. In other contexts the word "disaffection" might have a different meaning, but in the context of the Sedition Act it means more than political criticism; it means the absence of affection, disloyalty, enmity and hostility. To 'excite disaffection' in relation to a Government refers to the implanting or arousing or stimulating in the minds of people a feeling of antagonism, enmity and disloyalty tending to make Government insecure. If the natural consequences of the impugned speech are apt to produce conflict and discord amongst the people or to create race hatred, the speech transgresses paragraphs (d) and (e) of section 3(1). Again paragraph (f) of section 3(1) comes into play if the impugned speech has reference to question any of the four sensitive issues – citizenship, national language, special rights of the Malays and the sovereignty of the Rulers.

In P.P. v. Melan Abdullah, the Editor and sub-editor of the Utusan Melayu were found guilty of sedition in publishing a headline to a report of a speech by an Alliance M.P., "Hapuskan sekolah beraleran Tamil atau China di negeri ini". In an appeal from the Sessions Court to the High Court, the Chief Justice, Tan Sri H.T. Ong ruled that the Editor was not guilty as he had taken all steps to see that the law be observed. Nevertheless the Sub-Editor's conviction was upheld. The Chief Justice noted that the 1970 amendment to the Sedition Act gave "a new and, perhaps highly artificial meaning to what used to be considered seditious tendencies". He expressed the hope "... that, as and when the justifications no longer exists for banning fair comment on matters of public interest, the 1970 amendments...... will be removed".

(Straits Times, Wednesday, November 3rd, 1971, p. 7.) Ed.²
Parliamentary Privileges with regards to the six issues determined as having seditious tendency was withdrawn during the 1971 Constitutional amendments.

**PUBLIC ORDER (PRESERVATION) ORDINANCE 1958**

The Minister in charge of internal security under this Ordinance is empowered to authorise the telecommunication authority, in an area proclaimed by the Minister as one where a danger to public order exists, to withdraw totally or partially the use of all or any telecommunication faculties from any person, class of persons or the public at large.

**PENAL CODE**

A number of provisions in the Penal Code penalises indecent or improper communication. They include:

a) defamation, which is defined as words spoken or intended to be read or signs or visible representations containing any imputation concerning any person, intending to harm or knowing or having reason to believe that such imputation will lower the reputation of that person;

b) sale, etc. of obscene books;

c) uttering words with intent to wound the religious feelings of any person;

d) publishing or circulating statements conducting to public mischief.

**OFFICIAL SECRETS ACT, 1972 (AMENDMENT 1985)**

A law in Malaysia that has been accused of inhibiting free flow of communication is the Official Secrets Act, 1972, amended 1985 (OSA). The Act makes it illegal to publish anything prejudicial to the interests of the nation. Among other things, the OSA makes it an offence for any person to obtain, collect, record, publish or communicate to any other person any secret official code word, countersign, password or any article, document or information which is calculated to be or might be or is intended directly or indirectly useful to a foreign country.
The OSA, 1972, became notorious in 1985 when two journalists, a foreigner and a local, were charged under the Act.

The foreigner, James Clovis Clad, 38, a New Zealander, the Kuala Lumpur bureau chief for the "Far Eastern Economic Review" pleaded guilty in a magistrate's court to two charges of contravening the OSA.

He was charged with communicating to his editor in Hong Kong secret official information relating to the contents of a government paper "A managed and controlled relationship with the People's Republic of China". Secondly, for receiving secret official information knowing that it contravened the Act. James Clad was fined a total of M$10,000 for his offences.

The editor of the Far Eastern Economics Review in Hong Kong, Mr Derek Davies, said, "the fine imposed on Clad was intended as a warning to local and foreign journalists and to senior Malaysian officials about passing on information".

"Mr Davies said the article revealed little that was not already known publicly in Malaysia. He hoped Clad's work permit would be renewed after it expires early next year. (Reuters)

The local, New Straits Times (NST) journalist Sabry Sharif, 27, was charged under Section 8 of the Act which concerns the possession and use of secret documents or information and knowingly receiving such material. This charge was in connection with a report he wrote on aircraft said to be under consideration for purchase by the Royal Malaysian Air Force. Sabry Sharif was released on M$3,000 bail after NST Group Editor-in-Chief, Dr Munir Majid posted the bail. He pleaded not guilty to the charge. The maximum penalty for offences under Section 8 of the Act in seven years jail or a M$10,000 fine or both.

The first as involving a leader of the opposition political party, Lim Kit Siang, Secretary-General of the Democratic Action Party (DAP). The judge in the case, Government of Malaysia vs Lim Kit Siang (1978), Mr Justice Abdul Hamid, in his judgement made this observation (NST 8/11/78)
In my judgement there is no doubt whatever that all information contained in the documents relating to and associated with tender exercise such as the Staff Requirement Paper, technical brochures, evaluation report, tender briefs (as well as supplement tender briefs), minutes of meetings, negotiations of working committee, negotiation notes, contract documents and so forth were secret official information irrespective of whether the documents were classified 'Rahsia' (Secret) or 'Sulit' (Confidential). The documents and information were clearly those which Section 8 of the Act requires that they be protected from disclosure to unauthorised persons.

The notoriety of OSA was enhanced when amendments to the Act, provided for mandatory life imprisonment for spying. It also make the revealer and the receiver of official secrets punishable by law. Those found guilty under this Act will have to face at least one year's mandatory jail.

Some complaints against the Official Secrets Act amendments were: "the Prime Minister, in implementing the Act, may regulate matters without further reference to parliament. The PM amongs other things, also: "can describe the manner of classifying information, documents and other materials; and prescribe the manner of communication of official information".

"No guideline to indicate what is secret". "Basically, the Official Secrets Act prohibits anyone saying anything about anything to anyone" (STAR 20/11/85)

On the other hand, "ALIRAN president, Dr Candra Muzzafar, urged the public to help persuade the Government to replace the Official Secrets Act with a Freedom of Information Act". (STAR 17/11/85)

GENERAL ORDER

Another constraint to freedom of information, specifically of public officers is the "Conduct and Discipline, Chapter D of the General Order (GO) 1980. The relevant section of the GO forbids government officers from making public statements, especially to the media, which:

1. are detrimental to government policy or decision;
2. relate to his or her department's work without prior permission from the departmental head; and
3. may embarrass or ridicule the Government.

The impact of the Official Secrets Act and certain section of the General Order is indeed stifling to the operation of the media. "Pressman who has ever sought the most mundane clarification will attest to it." (STAR 20/11/85)

COPYRIGHT ACT, 1987

An Act pertaining to communication that can play an important role in enriching a nation's culture and its development is the copyright Act. The first law of copyright in Malaysia is based on the English law and the relevant statutory provision in the Copyright Ordinance (Cap. 73) which has been extended throughout the Malay States by the Copyright (Application) Ordinance 1953. This Ordinance besides adjusting the provisions of the English Copyright Act 1911 to local circumstances govern the importation into the Federation of works printed outside only in 1969, Malaysia legislated its own Copyright Act, 1969. However, due to the rapid development of communication technologies and the speedy increase in the domestic ownerships of video recorders and players, the piracy of popular films on video and the shortcomings of the Act is seen as adversely affecting the local film industries the need of a new copyright law was strongly felt.

The Copyright Act 1987 which replaces the Copyright Act of 1969 has widened its scope. It now protects the rights of Book Authors, Film Producers, Recording Artistes, Record/Tape Producers, Computer Software Engineers, etc.

The 1987 Copyright Act was drawn up along the lines of International Copyright Laws. Thus, although Malaysia is still not a member of any international convention on copyright, foreign works are felt to be adequately protected under the existing Copyright Act. Foreign literary, musical and artistic works published in Malaysia within 30 days of original publication elsewhere will be covered by the Act. This is in accordance with International Copyright Laws.
All local productions or creations are now automatically protected against any infringements of their rights.

Under the current Act, it is an offence to play musical works of local composers at any public place without the consent of the copyright owners. Also, it is an offence for discotheques, hotels, restaurants, airlines, pubs and shopping complexes to air the musical works of foreign artistes who meet some conditions of the new copyright.

Even Radio Television Malaysia (RTM) is required to obtain consent and has to pay royalties. However, there are provisions in the Act which allow government organisations to use copyrighted material and make arrangements to pay compensation later.

Also, 'Live' bands have to get the consent of copyright owners. Since most of the works played by bands are foreign, they or the owners of the establishments where they are performing must get the permission from an association of composers or publishers.

Photocopying a book or even a speech is also an offence under the Act if the copies are made for the purpose of trade.

The Ministry of Trade and Industry is responsible for the administration and control of the Copyright Act, 1987. It has set up a special Enforcement Division and has appointed 390 officers to man the Division.

The Copyright Act, 1987, gives enforcement officers more clout to carry out anti-piracy measures, extends the period of protection and broadens the works and scope of protection. The enforcement officers are empowered, with or without warrant to search premises and seize infringing items. They are also able to conduct criminal prosecution before any session courts for offences under the Act. Any transgression of this Act is considered to be a criminal offence.

However, in general the criminal and civil sanctions in the Act do not overlap. The right of the copyright owner to sue an infringer to get civil remedy is not inhibited by any criminal prosecution.
absolute privilege - a complete answer to defamation but applying only to Parliamentary and judicial proceedings.

qualified privilege - covering a wide field including reports of judicial proceedings and applying only where the statement was fair and accurate. ³

The Defamation Ordinance, 1957, which is based on the English Defamation Act, 1952, made important reforms in the law. Where B has published a defamatory statement of A, it is now in certain circumstances a defence to publish a correction and apology if the statement was made without intent to defame A and without negligence. In an action for slander calculated to disparage the plaintiff in any office, profession or business, it is no longer necessary to allege and prove special damage. The occasions of qualified privilege enjoyed by newspapers are extended. Broadcasts by radio are to be treated as publication in permanent form, so that if defamatory they will constitute libel and thus be actionable without proof of special damage. ⁴

The same applies for television broadcast.

CINEMATOGRAPH FILMS ORDINANCE, 1952

This Ordinance regulates the exhibition of cinematograph films. No cinematograph film can be screened in Malaysia without the approval for exhibition by the Board of film censors. No person shall display or cause to be displayed any picture, photograph, poster or figure advertising the exhibition of a film unless the same has been approved by the Board. An appeal from the decision of the Board of Censor lies with the Committee of Appeals, whose decision shall be final.

POST OFFICE ORDINANCE, 1947

Under this Ordinance, the Post-Master General and officers of the Postal Department have the exclusive privilege of conveying by post from one place to another whether by land or by sea or by air all letters and postcards except:

a) letters and postcards or letters and postcards not exceeding three in number sent by a private friend on his way, journey or travel for delivery by such friend to the person or persons to whom they are directed, without hire, reward or other profit or advantage;
DEFAMATION ORDINANCE, 1957

A law that strives to ensure fair communication among the people is the Defamation Ordinance, 1957. It codifies the Common Laws actions of libel and slander.

The classic definition of defamation as quoted in Essential Law for Journalists is as follows: "Defamation is the publication of any statement that exposes the victim to hatred, ridicule or contempt; which causes him to be shunned or avoided; which lowers his reputation in the estimation of right-thinking members of society generally; and which injures him, or tends to injure him, in his office, profession or trade.

There are two types of defamation: slander which is the spoken form and libel which is the permanent form, such as writing, printing, and even the broadcasting of words over the air.

In the case of slander, a man has to prove he has suffered damage as the result of defamation and that the damage can be expressed in terms of money. Exceptions to this rule include: the suggestion he is suffering from such diseases as leprosy or venereal disease; an imputation of unchastity in a woman and a statement disparaging a man in his business or trade. All are actionable without proof of damage.

Libel is the form of defamation that most concerns the journalist. To succeed in an action for libel a man must prove publication to a third person and that the statement was untrue and defamatory. An apparently innocent statement, which has a secondary or hidden meaning is also defamatory and is known as innuendo. A person who repeats a defamatory statement is also guilty of defamation. This also covers letters from readers that are printed in a newspaper.

There are four main defences to defamation:

- justification - that the statement was true in substance and in fact.
- fair comment - that the statement was made in good faith and without malice on a matter of public interest.
CONTEMPT OF COURT

People in communication, especially in the news media have a tendency to commit contempt of court, most of the time through ignorance and sometimes arrogance. The media must be careful not to commit contempt of court. This means outrages on judges, lowering the dignity of court and anything which could be said to prejudice a fair trial. A news media must guard against "scandalising" a court, and beware of comments about the fairness or process of the trial while it is subjudice (i.e. under judgement or pending).

Also, the news media must not publish reports that are emotionally charged or appear to favour one side. A case is subjudice until after the time of lodging an appeal has passed, or if there is to be an appeal, until the appeal is concluded.

Section 13 of the Courts of Judicature Act, 1964 gives power to the Federal Court and to every High Court to punish any contempt of the court.

The Rules of the Supreme Court contain provision for civil contempts, but in regard to criminal contempts the practice, procedure and forms for the time being in force in England are followed. Contempt of Court is regarded as a criminal matter and, as it affects the liberty of the subject, the procedure applicable must be followed strictly.

In Ambard v. Attorney-General of Trinidad and Tobago (1936) MLJ 117, the Privy Council, held that it is the ordinary right of members of the public or the press to criticise in good faith in private or in public the administration of justice. To justify a committal for contempt of court there must be evidence in the article itself taken as a whole that the publisher has acted with untruth or malice or what he imputed improper motives to those taking part in the administration of justice.

The early Malaysian cases following English procedure have listed the purposes of this punishment as preventing the undermining of public confidence in the Courts, loss of which would tend to deter members of the public from claiming these rights or that redress to which the law entitles them, as preserving the minds of the judges of the Court of Appeal from influence, as sustaining the confidence of the community in the judges and the administration of justice by the Courts at the highest pitch.
b) letters and postcards covering the affairs of the sender or receiver thereof, sent by a messenger employed for that purpose;

c) letters or postcards solely concerning goods or other property sent either by sea or by air to be delivered with the goods or property which such letters or postcards concern without hire, reward or profit or advantage for receiving, carrying or delivering them.

BERNAMA ACT, 1967

This Act became a controversy when Bernama, Malaysia's national news agency which was established in 1948 under it was assigned by the Government in April 1984 to be the sole agency to receive and distribute foreign news in Malaysia. The move and its revenue - earning aims merely implemented existing provisions in the original Bernama charter of 1967. Further, it hopes to eliminate misleading reports about Malaysia that could jeopardise the interest of Malaysia. However, critics fear that it makes it all to easy for the Government to blackout any foreign news it wants kept out of the local media. Thus, initially, editors of major newspaper companies protested against the arrangements. They fear it was the government's way to control news flow. However, over the years they found that their suspicions were yet to be proved true.

BROADCASTING ACT, 1987

This Act empowers the Minister of Information to look into the proper development of the broadcasting sector in Malaysia. The Act stipulates strict rules and regulations regarding the contents of programmes.

Information Minister Datuk Mohamad Rahmat said the Act would put an end to complaints by the public about the alleged violence and obscenity depicted in television programmes, especially those aired by TV3. "I have received lots of complaints from the public on this matter and, as I have said in the past, I will enforce greater censorship on programmes screened by both RTM and TV3". (New Strait Times, June 9, 87)

The Act is further intended to assist the industry in the production of local radio and television programmes. Also, it would ensure the orderly growth of secondary industries related to the electronic media.
pending when the respondents in the proceeding, proprietor, editor, printer and publisher of the newspaper Tamil Nesan, in its issue of June 9, 1949, published an article referring to the case of Sambasivam in which it was suggested that the Indian Government should take political action in London to prevent Sambasivam’s execution without awaiting the result of the appeal to the Privy Council. The article also stated that the Judge had sentenced Sambasivam to death in opposition to the juror’s not guilty verdict. It was further stated that Ganapathy had been hanged because, due to lack of experience of the procedure, it was not possible to intervene and get justice done. Of this publication the Court said,

"I am quite satisfied that his article must have been read by the ordinary man in this country as an indication that there had been a failure of justice on two occasions and that, in the case of Sambasivam, the Judge who tried the case deliberately condemned him to death in opposition to the verdict of the jury...it implies...that the administration of justice in this country is such that it is necessary to use political influence in order to set it right......at a time of emergency such as the present when, as a result of the continued defiance of the forces of law and order by bands of armed terrorists, stringent emergency measures have had to be enacted and enforced....it is more than ever essential that the confidence of the community in the Judges and in the administration of justice by the Courts should be sustained at the highest pitch......the article before me, taken as a whole, is a serious and deliberate attack upon the course of justice as administered by the Courts here and it contains a wholly unfounded attack upon the Judge who, in his judicial capacity, sentenced Sambasivam and, therefore, constitutes a serious and punishable contempt of Court".

In Kingdom v. Goho (1948) 14 MLJ 17, the offending publication was a letter written to the Honorary Secretary and members of the Bar Committee and to Mr. R.N. Green, an Advocate and Solicitor. The Court, as seems to be common in the Malayan cases, declined to set out the offensive language; but the Judge was clear that the letter would have amounted to contempt if published in a newspaper. The
In P.P. v Straits Times Press Ltd. (1949) MLJ 81, upon the application of the Public Prosecutor, the respondents who are the proprietors of Straits Times Ltd. were ordered to appear before the court and answer for their alleged contempt in publishing a certain letter in the Straits Times. The notice of motion, having set out the terms of the letter complained of, went on to allege that the criminal case referred to in the letter was sub-judice when the letter was published in that an appeal was pending; that the terms of the letter did not constitute a fair or accurate account of the trial nor fair comment thereon; and that its publication tended to bring into contempt the administration of justice by the Court. It was held in that case —

1. in applying the law of contempt the court will not lose sight of local conditions,

2. even severe criticism of what has actually occurred in a trial will be tolerated but inaccurate and misleading facts and comments will not,

3. the letter complained of in this case constituted a contempt of court in two days, firstly as tending to prejudice the fair disposal of the appeal and also as reflecting on the administration of justice by the court.

In Public Prosecutor v. Palaniappan (1949) 15 MLJ 246, the facts which gave rise to the contempt proceedings were the following:

In March, 1949, one Ganapathy was found guilty in the High Court in Kuala Lumpur of carrying arms, an offence punishable with death under the Emergency Regulations in force. His appeal to the Court of Appeal was dismissed and he was executed on May 4, 1949. On March 3, 1949, one Sambasivam had been on trial for the same offence in the High Court in Johore by a Judge with two Assessors. At the conclusion of Sambasivam's trial, the Assessors expressed their opinion that he was not guilty. However, the trial Judge disagreed and ordered a new trial. Sambasivam's retrial was held in Johore Bahru on the 21st and 22nd of March, 1949, before a different Judge and different Assessors. At this trial he was convicted and sentenced to death. An appeal to the Court of Appeal was dismissed whereupon he made application to the Privy Council for special leave to appeal to that body. Leave was granted and his appeal was
Court found it no less contemptuous although published to a very limited group of professional persons. The letter arose from an appearance of Mr. Goho before the Rent Assessment Board, which was here held to be a court for the purpose of contempt. Judge Brown, in this application for leave to issue a writ of attachment against Mr. Goho for contempt of court, conceded that Mr. Goho had left the Board with the feeling that he had been badly treated and Judge Brown specifically stated, "I am not prepared to say that feeling was unreasonable or unfounded." But these facts were relevant; only this latter is calculated, by its publication to deter the public from coming before the Board to have their matters adjudicated upon, and thereby to cause the obstruction of and interference with "the free open and unimpaired current" of justice. I have not the slightest doubt that it is so calculated. The Court granted on Order in terms of the Motion.

In Re Sin Poh Amalgamated Ltd. (1954) MLJ 152, an application on behalf of the Attorney-General for leave to issue writs of attachment for contempt was made against six newspapers and their respective editors. It was alleged that the newspapers concerned had published certain matters with regard to pending proceedings which tended to prejudice the trial of the persons charged. It was held any comment of a tendentious nature, which judges in advance the issues to be decided in proceedings which are pending, may be contempt of court.

In P.P. v Penang Municipal Services Union (1956) MLJ 269, it was held that the publication in that case was not merely a report of what happened in Court but contained comment upon what was said and there was ample authority for the presumption that comment upon pending proceedings might not be indulged in still less when that comment attributes improper motives either to the parties or counsel concerned in the case.

In P.P. v. Abdul Samad (1953) MLJ 118, it was held that contempt would be committed where it was known that at the time of publication that police investigation was proceeding and that a prosecution was, at the very least, under consideration, even though no one had been officially accused of the offence.
PARLIAMENT AND STATE LEGISLATIVE RIGHTS AND PREVILEGES

The Malaysian Parliament and State Legislatures have rights and privileges that journalists covering them must be sensitive to.

One of the latest incidents in this regard is the barring of the Sabah Times from covering proceedings of the Sabah State Legislative Assembly until it apologises for an article published in December 1987. State Assembly speaker Hassan Alban Sandukong, who issued the order, said the newspaper had published an article in English titled "Strange Scene At Assembly" which he said was an inaccurate report on the assembly's 10 sitting. He told reporters ... that the Sabah Times could only carry news on assembly proceedings filed by Bernama and credit the national news agency for the reports. (Bernama - 4/3/88)

The Berjaya State Assemblyman, Datuk Haji Mohamed Noor Haji Mansor who was the source of the report was found by the Committee for Rights and Privileges as infringing it and was recommended to be barred for two sitting.

CONCLUSION

Legal restraints upon communication in Malaysia, as discussed in this paper, are comprehensive. The Laws that have been discussed are just some of the more important ones that communicators would be wise to be familiar with if they want to perform their duties safely.

We find that the government of Malaysia's legal control of communication takes many forms. Controlling the "conditions of communication" is seen as the most effective means. If it is impossible to control the "conditions of communication" at its source then censorship measures are adopted.

The existence of various laws regulating communication had led the Partai Socialis Rakyat Malaysia (PRSM), deputy president, Abdul Razak Ahmad to comment "Press freedom in Malaysia does not appear to be a right but a privilege. Among the repressive laws are the ISA 1960 the Essential (Security Cases) Regulation 1975, the Printing Presses and Publication Act 1984", he said. (Star, 4.11.85)
Further, according to a veteran politician, Tan Sri Dr Tan Chee Khoon, in his column "Without Fear or Favour" in the Star (16/1/85) Malaysian editors have been conditioned to "behave" by the press laws, particularly by the annual press licence. He made his remark when no editors in Malaysia spoke up for the freedom of the press when the Prime Minister Datuk Seri Dr. Mahathir in an impromptu interview said that newspapers should not descend to sensationalism to boost their sales. Dr. Mahathir was referring to a particular newspaper which has been playing issues like the Malaysian Chinese Association crisis, the Papan nuclear waste dump and development projects at Bukit Cina, Malacca. Chee Khoon felt that the editors' silence does not augur well for democracy in Malaysia nor does it speak well for the newspapers in the country.

On the other hand, Prime Minister Datuk Seri Dr. Mahathir Mohamad, in his keynote address at the 1985 World Press convention in Kuala Lumpur rationalised that "The Press cannot escape laws on secrecy in the name of freedom. Just as the Government cannot be allowed to have the freedom to do exactly as it pleases in society, so too the media". (Star, 1/9/85)

On whether laws pertaining to communication in Malaysia have brought severe negative side effects to freedom of speech and press freedom is, still a continuing debate. In the abstract of Professor Ahmad Ibrahim's paper "Communication and Law from the point of View of Malaysia" "Quarterly Journal ITM, December 1971) it was noted that in Malaysia "It is not freedom to speak that is important so much as freedom after speech: the freedom from punishment for what one has said."

However, it must also be noted that some of the laws relevant to communication have greatly aided the development of local talents and the communication industry for example, the Copyright Act which safeguards all literary work. Furthermore, FINAS is empowered through law to protect the interest of the local film industry.

Finally, it can be concluded that the Malaysian Parliament has legislated and amended several laws which it deems vital for the security and well-being of the nation. These laws somehow have circumscribed to a certain extent, directly or indirectly, the freedom to communicate in the name of the national interest.
NOTES:

1. Ahmad Ibrahim; "Communication and Law from the Point of View of Malaysia" in Quarterly Journal Institut Teknologi MARA, Volume 3, December, 1971, No. 4.

2. Ibid.


4. Ahmad Ibrahim; p. 35

5. Ibid, p. 33-36

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APPENDIX A

LAWS REGULATING MASS MEDIA IN MALAYSIA

1. The Constitution of Malaysia
5. Printing Presses And Publication Act
   Act 301/1984, amended 1987
6. Copyright Act 1987
   Act 332
   Act 91/1964
8. Defamation Act (Rev. 1982)
   Act 986/1957
   Act 19/1958
    1965 55/1966 60/1966 A55
    Act 11/1960
    Act 31
    Act 5
13. Houses of Parliament (Privileges and Powers) F.M.
    Ord. 15/1952
    Ord. 16/1953
15. Internal Security Act Rev. 1972 (Am. P.U.(B)336/75)
    Act 82
    Act 114
17. National Library Act
    Act 80
18. Local Newspapers (Reprint 1965) Sarawak
    Cap 139
    Ord 86/1952


22. Official Secrets Act 88

23. Patents Sarawak (Re. 1968) Cap 61


27. Preservation of Books Act 35/1966


29. Registration of United Kingdom Patents Sabah Ord 1/1956 Cap 124


33. Theatres and Places of Public Amusement (Federal Territory) Act 182/1977

34. Trade Descriptions Act Act 187/1977

35. Trade Marks Act 1976 Act 175

36. United Kingdom Design (Protection) Rev. 1978 Act 214

37. U.K. Design Protection - Sabah Cap 152

38. U.K. Design Protection - Sarawak Cap 59

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<th>Act/Ordinance</th>
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<td>40</td>
<td>Patents Act</td>
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<td>Act 291/1983</td>
</tr>
<tr>
<td>41</td>
<td>Printing of Al-Quran Text Act, 1986</td>
</tr>
<tr>
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<td>Act 326</td>
</tr>
<tr>
<td>42</td>
<td>University and Colleges Act 1971 (Act 30)</td>
</tr>
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<td>43</td>
<td>Polis Act 1967</td>
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<td></td>
<td>Act 41/1967</td>
</tr>
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<td>44</td>
<td>Dewan Bahasa dan Pustaka Act 1959</td>
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<td>Act 213</td>
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<td>45</td>
<td>Post Office Ordinance, 1947</td>
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<td>46</td>
<td>Broadcasting Act, 1987</td>
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<td>47</td>
<td>FINAS Act, 1983</td>
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