

The State of Religious Expression in Malaysia

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Abstract—Great care is taken not to impinge on the religious sensitivities of various groups. Given the fact that Islam is the religion of the Federation, care is taken not to publish articles that cast a slur, intended or otherwise, on the religion or its adherents. All the media follow this policy. Thus, religious expression has always been monitored by the government in order to protect the racial harmony in multiracial-multicultural society in Malaysia. This protection is covered in the constitution and it can clearly be seen in practice in certain issues such as religious expression in the press, blasphemy, religious authority, inter-faith commission, and dress codes. Thus, Malaysia is restrictive in dealing with the issue of religious expression. It is quite controversial, even though the purpose is for political stability and security, because the state has been accused of restricting religious expression for regime security and political power.

Keywords— religious freedom, religious expression, Malaysia, human rights, Islam.

I. INTRODUCTION

CULTURAL sensitivities, especially concerning race and religion, are the main obstacles to the implementation of religious freedom and expression in Malaysia. Great care is taken not to impinge on the religious sensitivities of various groups. Given the fact that Islam is the religion of the Federation as stated in the Federal Constitution, care is taken not to publish articles that cast a slur, intended or otherwise, on the religion or its adherents. All media, including those operated by the opposition, follow this policy. Malays, by constitutional definition, are Muslims and with the inclusion of some aspects of Chinese, Indian, and tribal culture, and no media can carry articles that question the faith or ridicule it [1]. Thus, religious expression has always been monitored by the government in order to protect the racial harmony in multiracial-multicultural society in Malaysia. This protection is covered in the constitution and it can clearly be seen in practice in certain issues such as religious expression in the press, blasphemy, religious authority, inter-faith commission, and dress codes. This paper will examine each of these issues

and explain how both the government and society tackle the issue of religious expression. Can religious expression harm the society? What is allowed and disallowed? All these questions will be analysed in explaining the practice of religious expression in Malaysia.

Religion is an integral component of cultural values, even though in Southeast Asia its influence is similarly contested. Former Prime Minister, Mahathir Mohamad explains that the Malaysian values are based on Malay-Islamic culture and should be protected against the invasion of Western values. He argues that the aggressive separation of church and state in the West – in effect limiting religion to the private sphere – and the consequent process of secularisation have contributed to a moral void in public life and accentuated the negative impulses of individualism [2]. In Malaysia, despite the obvious diversity of religions – chiefly Islam, Buddhism, Hinduism and Christianity – and a similar process of secularisation, it has been argued that religion still plays an important part in everyday life and contributes to group identity and orientation. In fact, according to Joseph Lo, most East and Southeast Asians would prefer some constraints onto free speech, perhaps in the form of libel laws to protect cultures from various forms of defamation and hate speech [3].

In Malaysia generally, political decision-making is arrived at through processes of consensus rather than confrontation. According to Chandra Muzaffar, ‘None of the major Asian philosophies regards the individual as the ultimate measure of all things’ [4]. Still another important value is ‘the preference for consultation and consensus...to take the middle path, the Confucian *Chun Yung* or the Islamic *awsatuha*...This spirit of consensual *musyawarah* (or *muafakat*) is very much at play as we progress towards a cohesive regional community’ [5]. However, a strong bureaucracy and an absence of the separation of powers are still characteristics of Malaysian states. In fact, there has been practically a fusion of the state, the leading political party and the bureaucracy. This appears to conform to the Malaysian emphasis on harmony and consensus, which could obstruct the free exchange of ideas and rigorous political debate [6].

Therefore, Malaysia as a democratic state [7] is willing to suppress religious expression in order to ensure the Malay-Sunni Islam majority remains dominant. It is contended that such political stability will also buttress the political position of ruling party Barisan Nasional (BN) or United Malays National Organisation (UMNO). Since Independence from the British in 1957, Malaysia has always been intended to be a secular state. This only changed when Mahathir sparked the

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debate on Islamic state. First, Prime Minister, Tunku Abdul Rahman Putra Alhaj once admitted that Malaya/Malaysia is a secular state. However, Mahathir unilaterally, probably in the intention of challenging Islamic Party (PAS) concept of Islamic state, announced that Malaysia is an Islamic state. It brought controversy within the non-Malays community who rejected such notion in Malaysia. Mahathir's successor, Prime Minister Abdullah Ahmad Badawi declared that Malaysia is an Islamic state, but Malaysia is not a secular or theocratic state. He argued that Malaysia will be ruled by following Islamic principles and the Parliamentary democratic principles as stated in the Federal Constitution [8].

II. CONSTITUTIONAL PROVISIONS ON RELIGION AND RELIGIOUS FREEDOM

To conceptualise the parameters of religious freedom in Malaysia, it is important to consider several constitutional provisions together. First, article 3(1) of the Constitution states that Islam shall be the religion of the Federation, but other religions may be practised in peace and harmony in the Federation. This gives due regard to the elements and traditions of the Malay states long before the colonial period i.e. the Sultanate, Islamic religion, Malay language, and Malay privilege [9]. Historical evidence suggests that the Alliance memorandum during the drafting of the Constitution discussed the idea of Islam as a religion for Malaysia, but emphasised that this should not affect non-Muslim nationals to profess and practise their religion, and there is no implication that the State is not a secular State [10]. Mr Justice Abdul Hamid, the Reid Commission member from Pakistan opined that the provision on Islam as the religion of the State is innocuous. But the use of the word 'secular' by the founding fathers was never intended to suggest an anti-religious or anti-Islamic state of governance [11]. The Constitution envisages *Syariah* laws would be enacted to fulfil the personal law requirements of Muslims, but manifestly recognises that the *Syariah* would not be made the supreme law [12].

In the landmark case of *Che Omar bin Che Soh v. Public Prosecutor* [13], the Supreme Court was called upon to determine the meaning of article 3. The court stressed that the British intervention in Malaya separated Islam into the public and private aspects, where Islamic law is limited to matters of marriage, divorce, and inheritance only [14]. It is only in this sense of dichotomy that the framers of the constitution understood the meaning of the word Islam in article 3. Scholars like Ahmad Ibrahim also observed that the intention in making Islam the official religion of the Federation was primarily for ceremonial purposes [15], while Shad Faruqi stressed that 'the implication of Islam as religion of the Federation is that Islamic education and way of life can be promoted for Muslims. Islamic institutions can be established. Islamic courts can be set up, Muslims can be subjected to *Syariah* laws in certain areas provided by the Constitution' [16].

The Constitution also devotes an entire section to detailing

fundamental liberties guaranteed for the citizens. Freedom of speech is formally assured by Part II of the Federal Constitution under Article 10. Article 10(1) allows: a) every citizen has the right to freedom of speech and expression; b) all citizens have the right to assemble peaceably and without arms; and c) all citizens have the right to form associations. However, article 10(2) limits the right where Parliament may by law impose:

(a) On the rights conferred by paragraph (a) of Clause (1), 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 or morality and restrictions designed to protect the privileges of Parliament or of any Legislative Assembly or to provide against contempt of court, defamation, or incitement to any offence;

Article 11 provides for the freedom of religion [17]. On its face, this provision appears broad enough to guarantee religious freedom for the plural Malaysian society. A citizen reserves the right to profess, practice and – subject to article 11(4) – to propagate his religion. It is also suggested that this freedom can be construed to mean that one is free to relinquish or change a religious belief (albeit with limitations for Muslims under specific religious laws), and even to not be religious [18]. Article 11 is further supported by other Constitutional provisions. For instance, article 149 provides that Parliament may enact laws which would be inconsistent with the fundamental liberties under articles 5, 9, 10 or 13 only if action has been taken or threatened by a substantial body of persons against the nation. Thus, laws which would impinge on article 11 are unconstitutional. Even if a state of emergency is declared, any emergency laws enacted thereafter cannot curtail freedom of religion [19]. Article 8 also prohibits discrimination on the grounds of religion against public sector employees; in the acquisition or holding of property; and any trade, business or profession. In its relationship with article 3, it is worth noting that the freedom of religion is in no way affected by the status of Islam as religion of the Federation. Article 3(4) explicitly states that nothing in article 3 derogates from any other provision in the Constitution

Freedom of religion is nonetheless subject to several important restraints. A clear example would be article 11(5) which gives deference to public order, public health or morality. Therefore, any religious act which is contrary to general laws relating to public order, health or morality cannot be sustained under article 11. Another seemingly controversial provision is subsection 4's limitation on the propagation of religion among Muslims. It appears that this strikes against the 'freedom' idea, especially for those who view proselytising as an integral part of religious practice. However, one view is that subsection 4 does not restrict propagation per se. Sheridan and Groves argue that it merely renders it constitutional for state law (or federal law in the case of the Federal Territories) to control or restrict propagation [20]. In other words, as long as there are no state laws restricting propagation among Muslims, this one may still propagate, unless their acts violate

Article 11(5). On the other hand, Shad Faruqi justifies these restrictions in order to protect Muslims against well-organised and well-funded international missionary activities, and to preserve public order and social harmony [21]. Former Lord President of the Federal Court, Mohamad Salleh Abas also argues:

This limitation is logical as it is necessary consequence that follows naturally from the fact that Islam is the religion of the Federation. Muslims in this country belong to the *Sunni* Sect which recognises only the teachings of four specified schools of thought and regards others school of thought as being contrary to true Islamic religion. It is with a view to confining the practice of Islamic religion in this country within the *Sunni* Sect that State Legislative Assemblies and Parliament as respects the Federal Territory are empowered to pass laws to protect Muslims from being exposed to heretical religious doctrines, be they of Islamic or non-Islamic origin and irrespective of whether the propagator are Muslim or non-Muslim' [22].

The restraints on religious freedom are also developed through case laws – especially on the scope of the word 'practise' in article 11 – culminating in the 'non-mandatory practices' doctrine. In essence, this means that freedom of religion extends only to those practices and rituals that are essential and mandatory [23].

III. BLASPHEMY OR DISSENT AGAINST RELIGIOUS AUTHORITY

Religion is significant in determining the values that Malaysians hold. Thus, Malaysian – or Asian, as it were more generally – values are influenced by Islamic notions of morality and human dignity. The Mahathir model of Asian Values include the elements of strong authority, priority of community over the individual, and a strong family-based society, which he argues to find a basis from Islamic values [24]. In the context of the Malaysian state, the fusion of religious and political authority in public life is claimed to help avoid the moral decadence of the West and irresponsible political speech, and to contribute to the tolerance of different religions. Attempts to disrupt religious harmony are severely dealt with in Malaysia. Unlike in England where blasphemy is an offence only against the Church of England, the Malaysian Penal Code in sections 295-298A, entitled *Offences Relating To Religion*, punishes offences against all religions [25].

The issue of blasphemy became a worldwide issue especially in the Muslim world when Salman Rushdie published his book, the *Satanic Verses*, in 1988. Malaysia, along with all Islamic countries, condemned and banned the book because it ridiculed the most sacred symbols of Islam and resorted to profanity and insult to the Prophet Muhammad's family [26]. Chandra Muzaffar talked of the way in which characters and events in the book were distorted: 'to suit the author's vile imagination...The right to free speech should not be used – or rather abused – to propagate malicious lies, to pour filth upon the faith of a people' [27]. Even though the *Satanic Verses* was a novel and

an imaginative work of Rushdie which has nothing to do with religion and politics, the content of the book was described by many Muslims as an offensive attack on Islam and the Muslim community. The Iranian government sentenced Rushdie to the death penalty. In Malaysia, although the government did not impose a death sentence on Rushdie, alongside opposition party PAS, Islamic NGOs, and many Malay intellectuals, it denounced Rushdie as a blasphemer. The government, in this case, tried to show that it was against any attempts to condemn religion practised by Malaysian people in order to prevent controversy and protect religious sensitivities.

During the era of Abdullah's leadership, hate speech became crucial, given its negative impact on Malaysia's multiracial country. On 30 September 2005, hate speech became a global issue when the daily newspaper '*Jyllands-Posten*' (The Jutland Post) published an article which consisted of cartoons of Prophet Muhammad. One of the cartoons irresponsibly showed Prophet Muhammad wearing turban in the shape of bomb. This was seen by many Muslims as an attempt to intentionally depict him as the source of terrorism. These cartoons had triggered a worldwide protest and a banning of Danish products especially in Muslim countries. In Malaysia, Abdullah shut indefinitely a Borneo-based paper, the '*Sarawak Tribune*', for reprinting the cartoons. Lester Melanyi, an editor of the newspaper, resigned from his post for allowing the reprinting of a cartoon. Abdullah described their publication as insensitive and irresponsible and had also declared possession of the cartoons illegal. The paper had apologised for what it called an editorial oversight. Malaysia's third-largest Chinese-language daily, '*Guang Ming*', was also suspended from publication for two weeks of its evening edition for carrying one of the cartoons in its edition on 3 February 2006 [28].

However, for some cases, it is unclear whether they are inherently blasphemous or are a form of dissent against the religious authority. On 4 February 2002, several groups led by the Muslim Scholars Association of Malaysia (MSAM, Persatuan Ulama Malaysia) submitted a memorandum to the Conference of Rulers urging action against several individuals who are alleged to have insulted Islam in their writings. Those named in the memorandum included the Malaysian Human Rights Commissioner and the leader of a NGO Sisters in Islam Zainah Anwar, 'Malaysiakini' and 'New Straits Times' columnist Farish A. Noor, former 'The Sun' columnist Akbar Ali, writer Kassim Ahmad, University of Malaya researcher Patricia Martinez, and lawyer Malik Imtiaz Sarwar. They were accused of blasphemy by insulting Islam, the Prophet, belittling verses in the *Quran* and *Hadith*, and questioning the intellectual role of Muslim religious scholars or *ulama*. At first, MSAM lodged a police report on 25 January 2002 against a business weekly 'The Edge' writer, Farish Noor, for allegedly insulting Islam in an article published on 3 December 2001. In the report, MSAM president Abdul Ghani Samsudin accused Farish of insulting the Prophet and the sanctity of the religion by belittling the *Quran* and *Hadith* [29]. For instance, in the interview, Farish replied to the

questions on the role of the *ulama* and interpretation in the Quran:

That option is only for down and out and unemployable people like me. There is a desperate need for Malay Muslims to break free from the hegemonic grips of both the *ulama* and the state by reclaiming Islam for themselves. Islam is a discourse and all discourses are open, contested and plastic. If I can contribute in any way to keeping the doors to *ijtihad* (personal interpretation) open, I will do it. The danger of not doing is so great [30].

Zainah Anwar was accused as blasphemous when she said in the 'Utusan Malaysia' on 26 September 2000:

Islam is not owned by the individual or any groups who claim that they are *ulama*. Thus, any interpretation on Islamic sources such as *Quran* is not solely the domain of the *ulama* [31].

'The Sun' columnist Akbar Ali, who was said to have ridiculed and disparaged the *ulama* in his articles by referring to them as 'men who dislike shaving' and that the 'turbans of the mufti (religious leader) are too tight and therefore not enough oxygen is getting into their brains' [32].

What began as a religious issue, however, turned into a sensational political theatre when several UMNO members responded to the issue and criticised MSAM because of its close links with the opposition party, PAS. For instance, Mustapa Muhamad, Executive Director of National Council of Economic Action, supported the writers and said 'There is nothing wrong if their opinions do not go against the *aqidah* (faith) and Islam. Difference of opinion is normal in Islam' [33]. Furthermore, Zainuddin Maidin, Parliamentary Secretary for Ministry of Information, said 'Their (the writers) writings can improve the image of Islam that has been damaged by the frozen-minded and fusty orthodox scholars. Their (the writers) thoughts are respectable, through them people see the true Islam' [34]. The support from several UMNO members was a surprise, even to the secular-liberal NGOs themselves, because the ruling government, particularly during Mahathir's leadership, had never shown much intention of allowing free speech, or any space for dissent. In this regard, the UMNO support was understandable because Mahathir himself has been the favourite target of the MSAM and other Islamic bodies' wrath. The PAS Selangor website, for example, has a section dedicated to a collection of speeches, utterances and remarks made by the prime minister and several other cabinet ministers considered to have insulted Islam [35]. Clearly, this issue has become a political contestation between two strong Malay-based parties, UMNO and PAS.

More recently, a former mufti of the state of Perlis, Mohd Asri Zainul Abidin, was arrested on 1 October 2010 by the Selangor State Department of Religious Affairs (JAIS) and police personnel for giving a religious lecture to more than 500 people without an authorisation from the Selangor state religious department. On 18 October 2009, Mohd Asri was charged under Section 119(1) of the Selangor Islamic Religious Administration Enactment 2003. It was argued that Mohd Asri is widely known for his outspoken and liberal approach to

Islam, which has caused different opinion on certain issues between him and other Islamic religious institutions such as the National Fatwa Council [36].

IV. CONCLUSION

In sum, this paper offered the observation on religious freedom and expression from the human rights' perspective. Based on the above discussion, Malaysia definitely believes in more restrictive-stability approach in dealing with religious expression. Cultural sensitivities, especially concerning race and religion, are the main obstacles to the implementation of religious freedom in Malaysia. Great care is taken not to impinge on the religious sensitivities of various groups. It needs to be handled carefully through civilised means.

What interesting is that Malaysia, an illiberal democracy, seems to be more restrictive in protecting the regime status-quo, political stability and at the same time to avoid political change. Religious expression is allowed only if it is approved by the state and religious authority as long as it follows the teaching of Sunni sect. This is definitely protected by the constitution as Islam is a religion of the country, but other religions are allowed to be practised by their followers. There are also many restrictions imposed to the religious expression which are included in publication, dress codes, blasphemy and the intention to establish inter-faiths commission. What is obvious is that religious freedom and religious expression are very sensitive in the race relations in Malaysia. The government is seen trying to protect political stability and racial harmony in Malaysia, but at the same time it tries to maintain the status-quo as a way of regime security mechanism. Hence, the issue is so complicated but religious issues in a plural society such as Malaysia must be open to civilised, intellectual debates by all sections of the community. While concerns of social stability are understandable, actions must be reasonable and not at the expense of human dignity.

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- [7] Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York: W.W. Norton & Company, 2003).
- [8] Abdullah Ahmad Badawi also explains that *Islam Hadhari* is not a new religion, a new teaching nor a new *mazhab* (denomination). It is an effort to bring the *ummah* (the worldwide community comprising all adherent of the Muslim faith) back to the basics of Islam, back to the fundamentals as prescribed in the *Quran* and the *Hadith* which form the foundations for an Islamic civilisation. Therefore, *Islam Hadhari* aims to achieve 10 main principles:
Faith and piety in Allah;
A just and trustworthy government;
A free and independent people;

- A vigorous pursuit and mastery of knowledge;
 A balanced and comprehensive economic development;
 A good quality of life for the people;
 The protection of the rights of minority groups and women;
 Cultural and moral integrity;
 The safeguarding of natural resources and the environment; and
 Strong defence capabilities.
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- [11] Malik Intiaz Sarwar, *Latifah Mat Zin: Reaffirming the Supremacy of the Constitution*, 16 August 2007, available at: <http://malikintiaz.blogspot.com/2007/07/latifah-mat-zin-reaffirming-supremacy.html>
- [12] Sarwar also argues that "Unlike the Constitution of Pakistan that entrenches the *Syariah* as the basis of all law, the Federal Constitution does not accord the *syariah* law such status." See *Ibid.*
- [13] *Che Omar bin Che Soh v. Public Prosecutor* [1988] 2 MLJ 55. In that case, the accused was faced with a mandatory death sentence for drug trafficking. He challenged the sentence on the basis that the imposition of death penalty for the offence is contrary to Islamic injunction and therefore, unconstitutional and void.
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- [17] Article 11 reads:
 (1) Every person has the right to profess and practice his religion and, subject to Clause (4), to propagate it.
 (2) No person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of religion other than his own.
 (3) Every religious group has the right –
 (a) to manage its own religious affairs;
 (b) to establish and maintain institutions for religious or charitable purposes; and
 (c) to acquire and own property and hold and administer it in accordance with law.
 (4) State law and in respect of the Federal Territories of Kuala Lumpur, Labuan and Putrajaya, federal law may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.
 (5) This article does not authorize any act contrary to any general law relating to public order, public health or morality.
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 "Whoever by words, either spoken or written, or by signs, or by visible representations, or by any act, activity or conduct, or by organising, promoting or arranging, or assisting in organizing, promoting or arranging, any activity, or otherwise in any other manner:
 causes, or attempt to cause, or is likely to cause disharmony, disunity, or feelings of enmity, hatred or ill-will; or
 prejudices, or attempts to prejudice, or is likely to prejudice, the maintenance of harmony or unity,
 On the grounds of religion, between persons or groups of persons professing the same or different religions, shall be punished with imprisonment for a term of not less than two years and not more than five years."
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