

FREEDOM OF ISLAMIC EXPRESSION IN MALAYSIA

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Abstract: In Malaysia, Islam is the religion of the Federation, and the Islamic law system runs parallel to the civil law system. This triggers a political debate in defining Malaysia as either an Islamic or a secular state which makes the non-Muslims uneasy. Malaysia is also a multi-religious society prone to inter-group conflict. As such, care is taken not to publish articles that cast a slur on any religions in the country. Some of the contentious issues imposed in the press such as the case of the word ‘Allah’ and blasphemy and dissent against religious authority. Although the purposes of restriction are for political stability and national security, the ruling government has indeed manipulated the religious expression for political domination and regime security.

Keywords: Religious freedom; Religious expression; Malaysia; Islam; Blasphemy; Dress code; The press

Introduction

Freedom of expression is a fundamental liberty that all modern states should have in their constitutions and implement in the society. But freedom of expression is not absolute even to the defenders of the right. There is a heated debate in identifying the kinds of expressions that warrant constitutional protection. It is rather ironic that some staunch

defenders of free expression deny certain other practices including religious expression. Gregory P. Magarian explains that there are arguments for normative constraints on religious argument and the translation imperative on the ground that religious argument threatens liberal democracy.¹ They posit two distinctive sorts of dangers. First, they contend that religious beliefs cannot provide adequate justifications for coercive governmental actions in conditions of democratic pluralism. Members of a liberal democratic political community should not offer religious arguments in public debate, because such arguments by definition urge improper grounds for government action. Any coercion based on religious arguments is unfair to nonbelievers, because such coercion denies nonbelievers equal respect and full, fair access to the process of political decision-making.² Second, religious argument undermines public political debate, and thus threatens liberal democracy, by fostering social and political instability. Religious argument, on the

¹ Gregory P. Magarian. *Religious Argument, Free Speech Theory, and Democratic Dynamism*. 16 February, 2010 (on <http://www.thedivineconspiracy.org/Z5241W.pdf>, retrieved on 4 April 2011).

² Robert Audi, "The Separation of Church and State and the Obligations of Citizenship," *Philosophy and Public Affairs* 18 (1989), 259-276 and Abner S. Greene, "The Political Balance of the Religion Clauses," *Yale Law Journal* 102 (1993), 1611-1633.

restrictive theorists' account, carries a distinctive capacity to inspire intolerance of opposing political viewpoints.³

However, in contrast, some theorists argue that secularism poses a greater threat to liberal democracy than religion. Some compare what they portray as overblown claims of religion's divisiveness to the genuine divisiveness of political advocacy by or for historically disadvantaged racial and ethnic groups.⁴First, they reject the restrictive concern that resort to religious argument in public political debate denies nonbelievers equal respect and regard by underwriting religious justifications for coercive government action. These theorists maintain that whatever features of insularity or exceptionalism might cause certain religious arguments to alienate nonbelievers are equally likely to cause certain secular

³ Robert Audi, "Liberal Democracy and the Place of Religion in Politics" in *Religion In The Public Square: The Place Of Religious Convictions In Political Debate*. eds., Robert Audi and Nicholas Wolterstorff Lanham, (Md: Rowman and Littlefield, 1997), 5, Richard Rorty, "Religion as Conversation Stopper," *Common Knowledge* 3, 1 (1994), 1-6, William Marshall, "The Other Side of Religion," *Hastings Law Journal* 44, (1993), 843-858, and Kathleen M. Sullivan, "Religion and Liberal Democracy," *University of Chicago Law Review* 59, (1992), 195-199.

⁴ Michael W. McConnell, "Five Reasons to Reject the Claim That Religious Arguments Should Be Excluded From Democratic Deliberation," *Utah Law Review* (1999), 639-648. Richard Neuhaus takes the permissive attack on secular politics to its logical limit, insisting that religion's absence from public life could prefigure a totalitarian state. See Richard J. Neuhaus, *The Naked Public Square: Religion and Democracy In America* (Grand Rapids Mi: Eerdmans, 1984), 82.

arguments to alienate believers or others. In any event, they contend, religious argument in public political debate does not dictate policy outcomes but simply makes “one contribution among others in a debate about how political power is to be used”.⁵ Second, they deny that religious arguments are less accessible than secular arguments to the political community generally. They maintain that nonbelievers can access the distinctive sources of religious knowledge in the same way anyone accesses any source of knowledge – by reading or listening.⁶ The debate can also be examined from the perspective of whether religious expression inflicts or affects political instability or dynamism through political transformation.

Religious sensitivities are seen to be one of the main obstacles to the implementation of religious freedom in Malaysia.⁷ Great care is taken not to impinge on the religious

⁵ Larry Alexander, “Liberalism, Religion, and the Unity of Epistemology,” *San Diego Law Review* 30, (1993), 775-776 and Jeremy Waldron, “Religious Contributions in Public Deliberation,” *San Diego Law Review* 30, (1993), 817-829.

⁶ McConnell, “Five Reasons to Reject the Claim That Religious Arguments Should Be Excluded From Democratic Deliberation,” 652.

⁷ The examples of such sensitivities in Malaysia are that no pictures of pigs are used and pornographic expressions are banned because they are considered unIslamic or sometimes against Islam especially for pornography. However, there is strong consensus amongst Malaysians whether they are Malays (or other indigenous tribes), Chinese, or Indians, which rejects materials of a pornographic or sexual nature as immoral and obscene against any religious teachings. See Mohd Azizuddin Mohd Sani, *Freedom of Political*

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. No media can carry articles that question the faith or ridicule it.⁸ 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. Can religious expression harm the society? What is allowed and disallowed? This paper will examine each of these issues and explain how both the government and society tackle the issue of religious expression.

Religious Expression in Malaysia

Religion is an integral component of cultural values in Malaysia. 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 liberal values. He urges the three most basic elements

Speech and Social Responsibility in Malaysia (Bangi: UKM Press, 2010).

⁸Balan Moses, "Ethnic Reporting in the Malaysian Media," *Media Asia* 29, 2, (2002), 102-107.

of ‘Malayness’ – feudalism, Islam, and *adat* (traditional customs) as he saw it in 1970 in his book, *The Malay Dilemma*, should all be classed as features to be merely accepted as realities and perhaps adapted to modern needs.⁹ Mahathir accuses the Western liberals of practising unfettered free speech which, he believes, can corrupt Malaysian religious beliefs.¹⁰

Furthermore, Ismail Ibrahim admits that all positive values are Islamic values, e.g. respect to elderly people and good work ethics.¹¹ He also stresses that all societies have their own measurements of human rights, which are based on local values, religious practices and traditions. Freedom of speech should be used in as appropriate a manner as possible without undermining sensitive issues such as national security, religious beliefs and multiracial harmony. Some Southeast Asian leaders such as Mahathir have argued 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

⁹ Michael D. Barr, *Cultural Politics and Asian Values: The Tepid War* (London: Routledge, 2002), 42.

¹⁰ Mahathir Mohamad and Shintaro Ishihara, *The Voice of Asia: Two Leaders Discuss the Coming Century* (Tokyo: Kodansha International, 1995), 71-86.

¹¹ Interview with Ismail Ibrahim, former Chairman of the Malaysian Institute of Islamic Understanding (IKIM), 13 October 2001.

impulses of individualism.¹² 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 religions from various forms of defamation and hate speech.¹³

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”.¹⁴ Still another important value is “the preference for consultation and consensus...to take the middle path, the Confucian *Chun Yung* or the Islamic *amsatuba*...This spirit of consensual *musyawarah* (or *muafakat*) is very much at play as we progress towards a cohesive

¹²Mahathir and Ishihara, *The Voice of Asia: Two Leaders Discuss the Coming Century*, 1-9.

¹³ Daniel Bell, *East Meets West: Human Rights and Democracy in East Asia* (Princeton, New Jersey: Princeton University Press, 2000), 9.

¹⁴ Chandra Muzaffar, “Europe, Asia and the question of Human Rights,” *Just Commentary* 23, March 1996, 4.

regional community”.¹⁵ 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.¹⁶

Therefore, Malaysia as a democratic state¹⁷ 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).

Political Assessments on Religious Issues

Malaysia is reluctant to political change. The ruling political coalition, BN, (used to be known as Perikatan or Alliance) has continued to rule Malaysia since Independence. Political stability is undoubtedly always on the agenda of BN in every general election. BN is consistently portrayed as the protector of multiracial society in Malaysia. Hasny Md Salleh,

¹⁵ Anwar Ibrahim, Speech delivered at the *International Conference on Philippine Revolution and Beyond*, 23 August 1996, Manila, 4.

¹⁶ Mahathir and Ishihara, *The Voice of Asia: Two Leaders Discuss the Coming Century*, 5.

¹⁷ Fareed Zakaria, *The Future of Freedom: Illiberal Democracy at Home and Abroad* (New York: W.W. Norton & Company, 2003).

a Colonel in Malaysian Army, argues that Malaysia exercises ‘controlled democracy’ which simply means that as much as Malaysia is a democratic nation, the government rigidly stipulates what can be done and said. The media community is not spared this restriction.¹⁸ The government provides guidelines to the media community of what can and cannot be reported. The government utilises the media as its informational tool to reach out to the population, reporting successes for the country and reports of the failures and defamation of the opposition party. He admits that all these can be seen as the downside of the Malaysian government. Malaysia views the media as a ‘double-edged weapon’ and thus, must be controlled and exploited to the advantage of the government of the day. At the same time Salleh also argues that political instability would lead to loss of foreign direct investment and could give rise to internal security problems such as racial clashes or religious confrontations.¹⁹

In Malaysia’s case, we must understand that the fragility and diversity of the religious and social structures are potentialities for instability. Efforts must be maintained to ensure that a strong government and racial integration remain intact to facilitate and accommodate further development for the nation. However, these are sensitive religious issues that –

¹⁸Hasny Md Salleh. *War Against Terrorism: Malaysia’s Experience in Defeating Terrorism* (Carlisle Barracks, Pennsylvania 17013: U.S. Army War College, 2004).

¹⁹*Ibid.*

if not handled accordingly – could give rise to terrorism. Malaysia also needs to have a strong system of government. Most terrorist organisations are found in countries that have weak and unstable government or failed states. These states become easier targets of terrorism and extremist ideologies. Terrorism will have little or no support at all from a country that has a strong and stabilised form of government. The government remains sensitive over issues such as race, culture, religion and ethnicity, and every opportunity is taken to deny the terrorists from exploiting these issues. The government also ensures that the general social system is viewed as stable through both political and social equitable distribution of power and rights. According to Salleh, if issues such as the fragile social structure (social integration), extremist religious groups, national security, and the role of the media are not handled diplomatically, there will be dire prospects for political instability. Therefore, Salleh advocates that Malaysia needs all its legislative tools such as the restrictive laws of the Internal Security Act (ISA) that allows detention without trial, Official Secrets Act (OSA), Sedition Act (SA), and Printing Presses and Publications Act (PPPA) to remain politically and economically stable.²⁰ This is in line with a statement once made by former Prime Minister of Malaysia Mahathir Mohamad to the Far Eastern Economic

²⁰*Ibid.* Najib had announced on 16 September 2011 to abolish the ISA and introduce two new laws in national security. He also abolished the provision on annual renewal of publication permit under the PPPA.

Review on 28 October 1996, where he said: “The threat is from inside....So we have to be armed, so to speak. Not with guns, but with the necessary laws to make sure the country remains stable.”²¹ In the next sections, this paper will examine several controversial issues in regard with religious expression.

Constitutional Provisions on Religion and Religious Freedom: Is Malaysia an ‘Islamic State’?

It is important to consider several constitutional provisions together in order to conceptualise the parameters of religious freedom in Malaysia.²² First, article 3(1) of the

²¹ Errol P. Mendes, *Asian Values and Human Rights: Letting The Tigers Free* (Ottawa: Human Rights Research and Education Centre, University of Ottawa, 1994), 4, on (http://www.uottawa.ca/hrrec/publicat/asian_values.html, retrieved on 11 November 2008).

²² Article 19 in both the Universal Declaration on Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR) enumerates freedom of opinion and expression. The Human Rights Committee (HRC) stressed that this right includes not only freedom to ‘impart information and ideas of all kinds’, but also freedom to ‘seek’ and ‘receive’ them ‘regardless of frontiers’ and in whatever medium, ‘either orally, in writing or in print, in the form of art, or through any other media of his choice.’ This is clearly a very broad conception. However, as with the freedom of religion clause, this right is not unlimited. Rather, there’s some deference to public order or morals only to the extent that is necessary and provided by the law. It is also suggested that limitations must be clear, compatible with international human rights law, not weaken the essence of freedom of expression and must provide judicial oversight to challenge the illegal or abusive application of that limitation. See UN Human Rights Committee, *General Comment No. 10: Freedom of expression (Art.*

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 existing long before the colonial period to be continuously preserved and practised such as the Sultanate, Islamic religion, Malay language, and Malay privilege.²³ Historical evidence suggests that the Alliance memorandum during the drafting of the Constitution stated the idea of Islam is special in the constitution as a religion for Malaysia²⁴, but emphasised that

19), 29 June 1983, para. 2, on ([http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/2bb2f14bf558182ac12563ed0048df17?Opendocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/2bb2f14bf558182ac12563ed0048df17?Opendocument), retrieved on 3 June 2010); *Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression*, A/HRC/14/23, 20 April 2010, 13.

²³ Tommy Thomas, "Is Malaysia An Islamic State?," *Malayan Law Journal Article* (2006), 31.

²⁴Judge Abdul Hamid Mohamad in *Kamariah bte Ali v Kerajaan Negeri Kelantan, All Malaysia Reports* 3 (2002): 3512, lucidly explained how article 11(1) should be interpreted:

... the position of Islam in the Federal Constitution is different from the position of other religions. Firstly, only Islam, as a religion that is mentioned by name in the Federal Constitution, that is, as 'the religion of the Federation' - Article 3(1). Secondly, the Constitution itself gives power to the State Legislative Assemblies (for the States) to enact *Hukum Syarak* (Islamic law) in the matters mentioned in List 2, State List, 9th Schedule. In consonance with the requirements of List 2, The Syariah Courts (Criminal Jurisdiction) Act 1965 (Act 355/1965) and other Enactments (for the States) including those mentioned in this judgment, have been enacted. Therefore, if those laws, including s 102 of Enactment 4/1994, do not contravene List 2, and do not contravene the provisions of Act 355/1965, then those laws are valid.

this should not affect non-Muslim nationals to profess and practise their religion. In fact, the White Paper issued by the British Government on 14 June 1957, which contained the constitutional provisions for an independent Malaya, reiterated that a declaration of Islam as the religion of the Federation will in no way affect the position of the Federation as a secular State.²⁵ 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.²⁶

Since Independence from the British in 1957, it has always been maintained that Malaysia is to be a secular state. First Prime Minister, Tunku Abdul Rahman Putra Alhaj once made a political statement declaring Malaya/Malaysia is a

The above statements by Judge Abdul Hamid on how article 11(1) should be interpreted, was subsequently approved by Chief Justice Ahmad Fairuz Sheikh Abdul Halim in *Lina Joy v Majlis Agama Islam Wilayah Persekutuan & Dua Lagi*, *Malaysian Law Journal* 4 (2007), 585. See Pawancheek Marican, “Is Malaysia a Secular State?” *On Malaysian Law*, 23 September 2009 on (<http://www.onmalaysianlaw.com/2009/09/is-malaysia-secular-state.html>) retrieved on 17 January 2012).

²⁵*Ibid.*, 18-19.

²⁶ Malik Imtiaz Sarwar, *Latifah Mat Zin: Reaffirming the Supremacy of the Constitution*, 16 August 2007, on (<http://malikimtiaz.blogspot.com/2007/07/latifah-mat-zin-reaffirming-supremacy.html>, retrieved on 20 April 2010).

secular state.²⁷ However, this position changed when Mahathir sparked the debate on Islamic state in the 1990s. Mahathir also made a political statement, presumably with the intention of challenging the Islamic Party (PAS) brand of ‘Islamic state’,²⁸ and unilaterally announced that Malaysia is an

²⁷ Tunku Abdul Rahman Putra Al-Haj, had on 8 February 1983, when celebrating his 80th birthday, said Malaysia should not be turned into an Islamic state because the country had a multiracial population with various beliefs. Tunku Abdul Rahman Putra Al-Haj also said that the nation was set up as a secular state with Islam as the official religion and that this was enshrined in the Constitution. Tun Hussein Onn, on his 61st birthday, had also told reporters that he supported Tunku Abdul Rahman Putra Al-Haj’s view that Malaysia should not be turned into an Islamic state, and added that any move of this kind was neither wise nor practical. Tun Hussein Onn had further said that the nation can still be functional as a secular state with Islam as its official religion. *See* Sivaperegasam P. Rajanthiran, “DAP’s Opposition of Malaysia as an Islamic State,” *Seminar on National Resilience: Political Management and Policies* (Sintok: Institute of Tun Dr. Mahathir Mohamad’s Thoughts, 2011), on (<http://eprints.uum.edu.my/3183/1/S19.pdf>, retrieved on 23 April 2012).

²⁸ Lim Kit Siang, former DAP National Chairman, argues that The PAS’ Islamic State blueprint, the Islamic State Document, makes it clear that the Federal Constitution would become an Islamic Constitution by removing Article 4 that the Merdeka Constitution is the supreme law of the Federation with a new provision stipulating that *syariah* law is the supreme law of the country? A theocracy has two definitions – that it is a government ruled by a priestly order or by divine guidance. PAS’ Islamic State blueprint fits one if not both definitions of a theocracy. *See* Lim Kit Siang, “Five questions on the incompatibility of the PAS Islamic State blueprint with democracy, human rights, women rights and pluralism,” *DAP Malaysia*. 16 November, 2003, on (<http://dapmalaysia.org/all-archive/English/2003/nov03/lks/lks2748.htm>, retrieved on 3 January 2012).

Islamic state. It sparked a controversy and debate within the non-Malays' community, who rejected such notion in Malaysia. Mahathir's successor, Prime Minister Abdullah Ahmad Badawi, then drastically declared that Malaysia is an Islamic state, but maintained that 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.²⁹ Current

²⁹Lee Ban Chen. *Bagaimana Keris diganti dengan Merpati? (How to replace dagger with dove?)* (Kuala Lumpur: Oriengroup Sdn. Bhd., 2008), 48. 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:

1. Faith and piety in Allah;
2. A just and trustworthy government;
3. A free and independent people;
4. A vigorous pursuit and mastery of knowledge;
5. A balanced and comprehensive economic development;
6. A good quality of life for the people;
7. The protection of the rights of minority groups and women;
8. Cultural and moral integrity;
9. The safeguarding of natural resources and the environment; and
10. Strong defence capabilities.

In Parliamentary session on 27 August 2007, the prime minister reiterated that Malaysia was a Muslim country and governed according

Prime Minister Najib Tun Razak did make a statement, when he was the Deputy Prime Minister, on 17 July 2007 that Malaysia is not a secular state but an Islamic nation with its own interpretation. He said that:

Islam is the official religion and we are an Islamic state. But as an Islamic state, it does not mean that we don't respect the non-Muslims. The Muslims and the non-Muslims have their own rights (in this country)...We have never been secular because being secular by Western definition means separation of the Islamic principles in the way we govern a country.³⁰

The issue sparked criticisms from the opposition and civil society. For instance, Ambiga Sreenevasan, then president of Malaysia's Bar Council, rejected the notion that Malaysia is an Islamic state. Meanwhile, Chairman of the Christian Federation of Malaysia, Bishop Paul Tan, said that the use of the term 'Islamic state' is unacceptable to Malaysians of other faiths. This reaction is not unexpected as

to Islamic principles. He said that Malaysia firmly believed in the principles of Parliamentary democracy guided by the country's highest law, namely the Federal Constitution. See Abdullah Ahmad Badawi, *Islam Hadhari: A Model Approach for Development and Progress* (Petaling Jaya: MPH Publishing, 2006); *Berita Nasional (Bernama)*, "Abdullah chides Opposition for spinning out issues." 27 August, 2007, on (<http://www.bernama.com/bernama/v3/news.php?id=281491>, retrieved on 20 April 2010).

³⁰*Bernama*, "Malaysia Not Secular State, Says Najib," 17 July, 2007, on (http://www.bernama.com/bernama/v3/news_lite.php?id=273699 retrieved on 20 April 2010).

the non-Muslim community has been greatly alarmed by Islamisation agenda in Malaysia.³¹

Pawancheek Marican, a well-known solicitor, argues that ‘secular’ is defined by the Oxford Dictionary as “1. concerned with the affairs of this world; not spiritual or sacred. 2. (of education, etc) not concerned with religion or religious belief”. Therefore, there are two questions need to be answered; is this the situation in Malaysia as what in the definition, and is this what the Federal Constitution says. The answers to both queries are in the negative.³² There are many articles of the Constitution that place Islam in a special position such as article 74(4) (the right of the states to pass civil and criminal laws relating to Islam), article 12(2) (the right of the government to pass laws to grant financial assistance to Islamic institutions and for Islamic education), article 160 (the definition of ‘Malay’, one such requirement of which requires him to be a Muslim), and article 150(6A) (the Yang di Pertuan Agong cannot pass laws touching on Islamic matters when declaring an Emergency). In Malaysia, the constitutional structure is also such that Islamic law system runs parallel to the civil law system, due to an amendment passed in 1988. The various articles of the Federal Constitution, as described above, not only epitomise this duality of the constitutional structure, but it also enhances Islam’s special position.

³¹Carolyn Hong, “Furore over Najib’s ‘Islamic state’ remark,” *The Straits Times*, 21 July, 2007.

³²Marican, “Is Malaysia a Secular State?”.

Marican submits that the special status of Islam in this structure is the very antithesis or direct opposite of a secular state. Therefore, he concludes that Malaysia is certainly not a secular state. However, it would not be wrong to give Malaysia the appellation of ‘a hybrid state’.³³

Najib Razak, since he became Prime Minister in 2009, refused to be drawn into a debate on ‘Islamic state’, by saying on 2 May 2011 that “I do not want to enter into this polemic over what is (an) Islamic state because there are various interpretations of what is Islamic state”.³⁴ Najib tried to avoid the controversial debate on Malaysia as an ‘Islamic state’ because his ruling party BN has lose a quite significant of supports from the non-Muslims since the 2008 General election because of the Islamisation agenda practised by his predecessor. The debate caused by the Islamisation agenda has affected the practice on religious expression in which this paper will discuss later.³⁵

³³*Ibid.*

³⁴Asrul Hadi Abdullah Sani. ‘Najib ducks MCA’s Islamic state objection over PAS invite’, *The Malaysian Insider*. 2 May, 2011, on (<http://www.themalaysianinsider.com/mobile/malaysia/article/najib-ducks-mcas-islamic-state-objection-over-pas-invite/> retrieved on 2 May 2011).

³⁵BN component parties, MCA only won 37.5 percent (15 seats) of parliament seats contested. Gerakan was totally wiped out in Penang – its stronghold. The DAP campaigned that a vote for MCA or Gerakan is a vote for UMNO to capitalise on the anger of the Chinese community over UMNO. Thus, the track record of MCA and Gerakan was ignored with an emotional swing against UMNO. The Chinese and Indian votes have decisively swung to the DAP and PKR, causing Malaysian

In addition, as mentioned by Marican, the Constitution definitely gives special attention to Islam and 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.³⁶ In the landmark case of *Che Omar bin Che Soh v. Public Prosecutor*,³⁷ the Supreme Court was called upon to determine the meaning of article 3. The Court stressed that the British colonial in Malaya separated Islam into the public and private aspects, where Islamic law is limited to matters of marriage, divorce, and in heritance only.³⁸ 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

Chinese Association (MCA), Malaysian Indians Congress (MIC) and Gerakan, the ruling Barisan Nasional (BN) component parties, to lose massive support. See ASLI (Asian Strategy and Leadership Institute). *An Analysis of Malaysia's 12th General Election* (Kuala Lumpur: ASLI, 2008), on <http://www.asli.com.my/DOCUMENT/An%20Analysis%20of%20Malaysia.pdf>, retrieved on 3 June 2009).

³⁶Sarwar 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*.

³⁷*Che Omar bin Che Soh v. Public Prosecutor, Malaysian Law Journal* 2 (1988), 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.

³⁸Thomas, "Is Malaysia An Islamic State?," 28.

Federation was primarily for ceremonial purposes,³⁹ 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”.⁴⁰

Having said that, 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

³⁹*Ibid.*, 29.

⁴⁰Shad Saleem Faruqi, “Freedom of Religion under the Constitution,” *The Sun*, 18 May 2006, 1, on (<http://www.sun2surf.com/article.cfm?id=14147>, retrieved on 19 May 2006).

Assembly or to provide against contempt of court, defamation, or incitement to any offence;

Article 11 provides for the freedom of religion.⁴¹ 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.⁴² Article 11 is further supported by other Constitutional provisions. For instance, article 149 provides

⁴¹ 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.

⁴²Thomas, “Is Malaysia An Islamic State?,” 34.

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 as in the article 150 (6A) of the Constitution, any emergency laws enacted thereafter cannot curtail freedom of religion. 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.⁴³ In other words, as long as there are no state laws restricting propagation among Muslims, 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.⁴⁴ 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.⁴⁵

⁴³Lionel Astor Sheridan and Harry E. Groves, *The Constitution of Malaysia* (Singapore: Malayan Law Journal Ltd, 1987), 76.

⁴⁴ Shad Saleem Faruqi, "Support for Religious Liberty," *Sunday Star*, 25 February 2001.

⁴⁵ Mohamed Salleh Abas, *Selected Articles & Speeches on Constitution, Law & Judiciary* (Kuala Lumpur: Malaysian Law Publishers, 1984), 10.

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.⁴⁶ In *Hjb Halimatussaadiab bte Hj Kamaruddin v. Public Services Commission, Malaysia & Anor*,⁴⁷ the court rejected a woman’s contention to be allowed to wear ‘*purdah*’ (a headdress covering a woman’s entire face except the eyes) to work because the government was entitled to forbid a religious tradition that was non-essential and optional in the interests of the public service. Similarly, in *Meor Atiqulrahman bin Ishak & Ors v Fatimah Sibi & Ors*,⁴⁸ the court rejected demands by Muslim boys to be allowed to wear turbans to school.

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

⁴⁶ Ahmad Masum, “Freedom of Religion under the Malaysian Federal Constitution,” *Current Law Journal* 2, 1 (2009), 4.

⁴⁷ *Malaysian Law Journal* 3 (1994), 61.

⁴⁸ *Current Law Journal* 4 (2006), 1.

society, which he argues to find a basis from Islamic values.⁴⁹ 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.⁵⁰

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

⁴⁹Mohd Azizuddin Mohd Sani, *Mahathir as a Cultural Relativist: Mahathirism on Human Rights*, paper presented at the 17th Biennial Conference of the Asian Studies Association of Australia in Melbourne, 1-3 July 2008, 4.

⁵⁰Article 298A(1) mentions that: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:

- (a) causes, or attempt to cause, or is likely to cause disharmony, disunity, or feelings of enmity, hatred or ill-will; or
- (b) 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.

with all other 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.⁵¹ 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".⁵² 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 the majority Malaysian people in order to prevent controversy and protect religious sensitivities.

⁵¹ Shad Saleem Faruqi, "Constitutional Law, Rule of Law and Systems of Governance in Islam," in Ibrahim A.S. (ed.) *Islam, Democracy and Good Governance: The Malaysia Experience* (Shah Alam: UPENA, 2004), 20.

⁵² Chandra Muzaffar, *Challenges and Choices in Malaysian Politics and Society* (Penang: Aliran Kesedaran Negara, 1989), 425-426.

During the era of Badawi'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, Badawi 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. Badawi 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 2006.⁵³ In another case, a Tamil-language

⁵³British Broadcasting Corporation (BBC), "Islam-West divide 'Grows Deeper'," *BBC News*. 10 February, 2006, on (<http://news.bbc.co.uk/2/hi/asia-pacific/4699716.stm>, retrieved on 10 February 2006); *Media Guardian*, 'Danish paper rejected Jesus cartoons', 6 February, 2006, on (<http://www.guardian.co.uk/media/2006/feb/06/pressandpublishing.politics>, retrieved on 6 February 2006).

newspaper, 'Makkal Osai' had its operations shut down for a month in 2007 and its permit suspended for publishing a picture that associated Jesus with cigarettes and beer. However, there is a claim that 'Makkal Osai' has been critical to the MIC in the past, and the MIC owns a rival paper and appealed to the Internal Security Ministry to have the 'Makkal Osai' censored for the case of Jesus picture.⁵⁴

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

⁵⁴ M. North, *World Press Freedom Review 2007: Malaysia* (Vienna: International Press Institute, 2007), on (http://www.freemedia.at/cms/ipi/freedom_detail.html?country=/KW001/KW0005/KW0123/, retrieved on 3 June 2009).

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 Noor of insulting the Prophet and the sanctity of the religion by belittling the *Quran* and *Hadith*.⁵⁵ For instance, in the interview, Noor 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.⁵⁶

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*.⁵⁷

⁵⁵ Susan Loone, *Malaysiakini*, 24 February, 2002, on (<http://www.malaysiakini.com/news/20020224001284.php>, retrieved on 25 February 2002).

⁵⁶ *Ibid.*, 1-2.

⁵⁷ Muslim Scholars Association of Malaysia (MSAM), *Kontroversi Mengenai Memo Kepada Majlis Raja-Raja Melayu* (Controversy Surrounding Memorandum to the Council of Malay Rulers) (Petaling Jaya: MSAM, 2002), 4.

‘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”.⁵⁸

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.”⁵⁹ 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.”⁶⁰ 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

⁵⁸*Ibid.*, 2.

⁵⁹*Ibid.*, 42.

⁶⁰*Ibid.*, 43.

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.⁶¹ Clearly, this issue has become a political contestation between two strong Malay-based parties, UMNO and PAS.

The MSAM's memorandum triggered a confrontation between Islamic NGOs, supported by the Islamic party PAS, and secular-liberal NGOs, supported by the Nationalist party UMNO, on the issue of free speech, especially on the boundary of free speech with respect to Islam. In my view, if Malaysia believes in a democratic system which encourages freedom of speech as well as freedom of religion, there should be a meeting between the MSAM and those writers where dialogue takes place in a civil and peaceful manner because this issue involves Islam, and because of the sensitivity surrounding it. Freedom of speech should not be sacrificed on this issue, but all parties should show a sense of social responsibility in discussing such a sensitive matter. Through dialogue, parties can seek peaceful resolution, avoid hyper-partisan deadlocks and achieve some compromise.

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

⁶¹Maznah Mohamad, "Islam and the Politics of Free Speech," *Aliran Monthly* 22, 1 (2002), 6.

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, Abidin was charge under Section 119(1) of the Selangor Islamic Religious Administration Enactment 2003. It was argued that Abidin 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.⁶²

Conclusion

In sum, this paper offered the observation on religious expression from the Malaysian 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

⁶²Suara Rakyat Malaysia (Suaram), *Malaysia Human Rights Report 2009: Civil & Political Rights* (Petaling Jaya: Suaram Komunikasi, 2010), 72.

change.⁶³ 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.

⁶³ There is an exception. There is no mention at all in the Federal Constitution about the nonbelievers because each one of Malaysians is assumed to embrace one religion or belief. Malaysia used to encourage Malaysians, especially the non-Muslims, to embrace any religion in order to differentiate them with the Communists who were considered as the nonbelievers. However, there is no indication contemporarily that there is a terminology to differentiate the believer and non-believer in the Malaysian constitution.