

Critique Against the Government: Freedom of Expression in Malaysia

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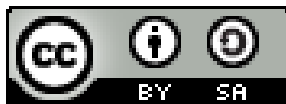
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ABSTRACT

This research investigates the scope and constraints of free speech and expression in Malaysia, with a primary emphasis on critiques of the government. It aims to dissect how the liberties guaranteed by Article 10 of the Federal Constitution are limited by legislation such as the Sedition Act 1948, the Communications and Multimedia Act 1998, and the Printing Presses and Publications Act 1984. It contributes to the discourse on constitutional and human rights by highlighting how the selective enforcement of these statutes suppresses dissent, promotes self-censorship, and undermines democratic participation, while also offering comparative insights into how Malaysia's legal framework diverges from international standards. The research employs a qualitative doctrinal method, analyzing constitutional provisions, statutory texts, case law, and international treaties. It is supplemented by secondary sources, including academic commentary and media reports, as well as a comparative analysis of other jurisdictions. The findings reveal that despite constitutional promises, freedom of expression remains heavily restricted through outdated and vaguely worded laws, illustrated by high-profile cases involving journalists, activists, and opposition figures that demonstrate patterns of legal intimidation and abuse of power; although digital media provides new avenues for discourse, it remains closely monitored by state authorities. The study concludes that legislative reform is essential to narrow the scope of restrictive laws, align domestic practices with international human rights norms, enhance judicial independence, and promote greater transparency and accountability, thereby ensuring a balanced approach that protects free expression while maintaining societal stability.

Introduction

Expression freedom is widely acknowledged as a fundamental pillar of human rights and constitutes the essential cornerstone upon which democratic societies are built.¹ Nevertheless, its restriction in the name of peace, security, and social order

¹ Siti Nurbayani et al., "Freedom of Expression, Aspiration and Gender: A Cultuling in the Student Demonstration," *Social Sciences & Humanities Open* 11 (2025): 101267, <https://doi.org/10.1016/j.ssaho.2024.101267>.

remains a contentious legal issue.² In the context of Malaysia's legal structure, the Federal Constitution's Article 10 clearly safeguards the entitlement to free speech; nevertheless, this constitutional protection is delimited by legislative enactments, including the Sedition Act 1948, the Communications and Multimedia Act 1998, and the Printing Presses and Publications Act 1984.³ These laws have been recurrently employed to curtail political criticism and public dissent, thereby generating a persistent tension between the protection of constitutional freedoms and the exercise of state regulatory authority.⁴

Culture and religion play a significant role in shaping these restrictions, most visibly through the controversial “3R” policy (*Race, Religion, Royalty*), which dictates the boundaries of permissible discourse.⁵ This raises a regulatory weakness: who determines what is deemed sensitive, and how can it be justified when statements do not directly undermine societal harmony? Such vague legal standards and selective enforcement increase the risk of abuse of power and undermine democratic principles.⁶ Benjamin Franklin also endorsed this perspective, underscoring the critical role of free expression in upholding a democratic system. According to Franklin, freedom of thought is the essence of wisdom and is intertwined with public freedom, which is fundamentally freedom of speech.⁷

Previous research has explored aspects of this issue, but leaves critical gaps. One study examined Malaysia's regulation of political speech, but overlooked the implications for digital media.⁸ Another focused on constitutional limits without analysing selective enforcement.⁹ A further work critiqued the Sedition Act's colonial

² Thomas Kasakowskij et al., “Network Enforcement as Denunciation Endorsement? A Critical Study on Legal Enforcement in Social Media,” *Telematics and Informatics* 46 (March 2020): 101317, <https://doi.org/10.1016/j.tele.2019.101317>.

³ Asif Mohiuddin, “Democratic Discourse in Context: Malaysia's Approach to Freedom of Expression,” in *Human Rights Law in Egypt and Malaysia: Freedom of Religion and Expression* (Cham: Palgrave Macmillan, 2024), 203–55, https://doi.org/10.1007/978-3-031-63859-6_5.

⁴ Norhafiza Mohd Hed, “‘The Politics of Fear’: How Does It Affect Youth Political Participation in Malaysia?,” *Intellectual Discourse* 33, no. 2 (June 28, 2025): 497–525, <https://doi.org/10.31436/id.v33i2.2213>.

⁵ Jahid Siraz Chowdhury et al., *The Intersection of Faith, Culture, and Indigenous Community in Malaysia and Bangladesh*, SpringerBriefs in Social Work (Cham: Springer Nature Switzerland, 2024), <https://doi.org/10.1007/978-3-031-74300-9>.

⁶ Dian A H Shah, “Dismantling Democratic Change in Asia: Modalities and Weapons of Choice,” *International Journal of Constitutional Law* 22, no. 4 (December 29, 2024): 997–1030, <https://doi.org/10.1093/icon/moae088>.

⁷ Jonathan Barth, “‘Liberty of Conscience Is Every Man's Natural Right’: Historical Background of the First Amendment,” *Journal of Policy History* 35, no. 4 (October 20, 2023): 435–53, <https://doi.org/10.1017/S0898030623000234>.

⁸ Amelia Johns and Niki Cheong, “Feeling the Chill: Bersih 2.0, State Censorship, and ‘Networked Affect’ on Malaysian Social Media 2012–2018,” *Social Media + Society* 5, no. 2 (April 19, 2019), <https://doi.org/10.1177/2056305118821801>.

⁹ Saidah Fasihah Binti Che Yusoff and Rohaida Nordin, “Freedom of Expression in Malaysia: Compatibility with the International Human Rights Standard,” *BESTUUR* 9, no. 1 (August 12, 2021): 44, <https://doi.org/10.20961/bestuur.v9i1.51637>.

legacy without linking it to current political misuse.¹⁰ The memorandum reviewed Malaysia's legal framework without providing regional comparisons.¹¹ A recent human rights report highlighted abuses of restrictive laws but failed to propose clear reform models.¹²

This research fills that gap by providing a holistic analysis that connects constitutional provisions, statutory enforcement practices, and digital regulation, while comparing Malaysia's framework with international standards and best practices. Its novelty lies in bridging traditional legal restrictions with evolving digital controls, illustrating their combined impact on democratic discourse. The urgency of this research stems from ongoing legal reforms, Malaysia's democratic transitions, and increasing public demand for transparency and accountability.

Methods

The article employs a qualitative, doctrinal legal research method by analysing constitutional provisions, statutes such as the Sedition Act, case law, and international treaties. It relies on secondary sources, such as legal texts, academic commentary, and media reports, to examine how freedom of speech is treated in Malaysia. The author employs legal reasoning and comparative analysis to highlight issues and advocate for reform, with a brief conceptual stance on method outlined at the end of the introduction. The opinion or conceptual article on the approach to methods should be included in the end part of the introduction.

Discussion

The Right to Freedom of Speech and Expression in the Malaysian Context

Freedom of speech is a form of communication that enables the unrestricted expression of feelings, concepts, and language. This is certainly different from hate speech, which is intended to hurt and attack the honour of others. In general, freedom of expression is considered a fundamental right for every citizen, allowing them to express their opinions, criticisms, or dissatisfaction with government policies. This freedom should be exercised by anyone without threat from any party, including the government as the authority.¹³ This principle is essential within human rights and democratic frameworks, enabling citizens to participate in political

¹⁰ Nurul Azreen Azlan, "Seditious Spaces: Protest in Post-Colonial Malaysia," *A+BE | Architecture and the Built Environment*, no. 26 (2018): 1, <https://doi.org/https://doi.org/10.7480/abe.2018.26.2661>.

¹¹ Ainun Najib et al., "Regulation on Freedom of Expression on Social Media in Indonesia and Malaysia," *Journal of Indonesian Constitutional Law* 1, no. 1 (2024): 46–60, <https://doi.org/https://doi.org/10.71239/jicl.v1i1.20>.

¹² Rebecca K Helm and Hitoshi Nasu, "Regulatory Responses to 'Fake News' and Freedom of Expression: Normative and Empirical Evaluation," *Human Rights Law Review* 21, no. 2 (March 12, 2021): 302–28, <https://doi.org/10.1093/hrlr/ngaa060>.

¹³ Donato Vese, "Governing Fake News: The Regulation of Social Media and the Right to Freedom of Expression in the Era of Emergency," *European Journal of Risk Regulation* 13, no. 3 (September 11, 2022): 477–513, <https://doi.org/10.1017/err.2021.48>.

processes, express their criticisms, share information, and engage in discussions about important societal issues. Freedom of expression is crucial to living in a free and open society, as its absence can have significant repercussions not only for individuals but also for the community as a whole.¹⁴

Therefore, freedom of expression, along with other freedoms, is considered the centrepiece of liberal constitutionalism and has been regarded as essential since the Second World War as a fundamental element in the development of constitutional democracy.¹⁵ Theoretically, the right to free expression involves individuals' ability to express their critiques, beliefs, and thoughts without coercion or government intervention. This liberty extends beyond verbal expression to include diverse modes of communication, such as clothing, literature, artistic performances, demonstrations, and other manifestations of dissent.¹⁶ According to Masum, freedom of speech is more significant than democracy itself. While democracy is often associated with the notion of free expression, it does not inherently secure this right; instead, it subjects it to specific limitations.¹⁷

The guarantee of freedom of speech in Malaysia is enshrined in Article 10 of the Federal Constitution, but it is nevertheless subject to restrictions under Article 10(4). This freedom supports democracy and intellectual growth, fostering a more open and inclusive society. However, free speech is frequently restricted and seen as a threat, despite leaders encouraging open expression. The restriction of free speech stands in opposition to the intrinsic plurality of human thought and perspective. Pursuant to Article 19 of the Universal Declaration of Human Rights (UDHR), freedom of expression is affirmed as a universal and inalienable entitlement, constituting a fundamental principle within the broader paradigm of international human rights law and discourse.¹⁸ Hence, it proves that they also support global freedom of expression. In Malaysia, political speech is often targeted, with government criticism treated as a crime. Globally, news websites enable people to

¹⁴ Aniceto Masferrer, "The Decline of Freedom of Expression and Social Vulnerability in Western Democracy," *International Journal for the Semiotics of Law - Revue Internationale de Sémiotique Juridique* 36, no. 4 (August 12, 2023): 1443–75, <https://doi.org/10.1007/s11196-023-09990-1>.

¹⁵ Adrienne Stone, "The Comparative Constitutional Law of Freedom of Expression," in *Comparative Constitutional Law* (Cheltenham: Edward Elgar Publishing, 2011), 680, <https://doi.org/10.4337/9780857931214.00031>.

¹⁶ Anthony Lester and Susan Hulton, "Freedom of Expression under the European Convention," in *International Human Rights Law in the Commonwealth Caribbean* (Leiden, The Netherlands: Brill | Nijhoff, 1991), 185–209, https://doi.org/10.1163/9789004479418_026.

¹⁷ Ahmad Masum and Md Rejab Md Desa, "Media and the Libel Law: The Malaysian Experience," *Procedia - Social and Behavioral Sciences* 155 (November 2014): 34–41, <https://doi.org/10.1016/j.sbspro.2014.10.252>.

¹⁸ Mukhlis et al., "Rejection of Former Shia Community in Sampang Perspective on Human Rights Law: Discourse of Religious Rights and Freedom in Indonesia," *Lex Scientia Law Review* 7, no. 2 (2023): 237, <https://doi.org/https://doi.org/10.15294/lesrev.v7i2.72156>.

voice their opinions and influence others, but many governments respond negatively to criticism and take steps to silence dissent.¹⁹

Despite its membership in the United Nations and its formal endorsement of the Universal Declaration of Human Rights, Malaysia has yet to ratify several key international human rights instruments that safeguard the right to freedom of expression, media independence, and access to information.²⁰ Specifically, these international agreements include the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) and the International Covenant on Civil and Political Rights (ICCPR). Article 19 of the ICCPR explicitly enshrines the right to hold opinions without interference and the freedom to seek, receive, and impart information and ideas across borders. Similarly, the CAT not only prohibits acts of torture but also provides an essential framework for protecting journalists, human rights defenders, and activists who may face persecution or violence as a consequence of their expressive activities.²¹ Malaysia's non-ratification of these treaties indicates that the substantive obligations and normative protections contained therein are not legally binding or directly enforceable within its domestic legal framework, thereby limiting the extent to which international human rights standards on freedom of expression can be operationalized in the national context.

Article 19 of the ICCPR upheld "universal standards" which often conflict with our deeply held values of rigour, excellence, and high quality. According to the Aristotelian tradition, the impact of government criticism depends on four factors: the speaker, the audience, the message, and the context.²² Scholarly discussion has highlighted that, in Malaysia, the freedoms of expression, association, and assembly are significantly constrained by administrative and governmental oversight. This control impedes the practical exercise of these rights to a greater extent than that of other fundamental rights protected under Part II of the Federal Constitution. Furthermore, the Human Rights Commission of Malaysia (SUHAKAM) has identified several legislative provisions—specifically Article 233 of the Communications and Multimedia Act (CMA), the Sedition Act 1948, the Peaceful Assembly Act 2012, and Sections 504 and 505 of the Penal Code—as instruments frequently employed to regulate, suppress, and intimidate the exercise of free speech and public expression, notwithstanding the constitutional protections ostensibly

¹⁹ Netta Hakak, "Silencing Dissent: Government Measures and Moral Panic in the Aftermath of the Black Lives Matter Resurgence," *Equity in Education & Society*, March 17, 2025, <https://doi.org/10.1177/27526461251320115>.

²⁰ Yussoff and Nordin, "Freedom of Expression in Malaysia: Compatibility with the International Human Rights Standard."

²¹ Yussoff and Nordin.

²² Jennifer Peeples and Mollie Murphy, "Discourse and Rhetorical Analysis Approaches to Environment, Media, and Communication," in *The Routledge Handbook of Environment and Communication* (London: Routledge, 2022), 50–62, <https://doi.org/10.4324/9781003119234-5>.

provided by the Federal Constitution.²³ SUHAKAM underscored the State's constitutional obligation, as articulated in Article 10 of the Federal Constitution, to safeguard the individual's right to freedom of speech and expression. In its public statement reported by *Malay Mail*, SUHAKAM expressed concern over the continued enforcement of restrictive legislative measures that appear inconsistent with the normative principles enshrined in Article 19 of the UDHR and Article 10 of the Federal Constitution. The Commission further asserted that the exercise of free speech must be protected from any form of reprisal, coercion, or intimidation, thereby reaffirming the State's duty to ensure that constitutional and international human rights guarantees are meaningfully upheld in practice.²⁴

The safeguards provided by free speech and expression concurrently cover the liberties of the press, assembly, religion, and access to information. While assembly and religion are defined in the Federal Constitution, as outlined in Articles 10 and 11, freedom of information remains a contentious issue in Malaysia. As the term implies, the right to information encompasses individuals' entitlement to access data and documents held by governmental bodies and public institutions. It also includes the broader freedom to seek, receive, and disseminate information, which is a fundamental component of democratic governance and transparency.²⁵ The constitution or national law does not grant a statutory right to obtain information, but this right is crucial for participatory democracy and Malaysia is not distant from the reality of freedom of information being a global phenomenon.

Press freedom is fundamentally linked to the entitlements of expression, speech, and information access, especially in the current digital age where online channels are the main route for information dissemination. This dynamic has compelled governments to seek an equilibrium between the regulation of expression and the preservation of free speech as a fundamental human right. An independent and pluralistic media sector remains indispensable for the practical realization of freedom of opinion and expression.²⁶ Collectively, these principles constitute the cornerstone of a democratic society and are vital to advancing Malaysia's ongoing agenda for comprehensive institutional and governance reform.

Recognising the vital role of a free and independent media in upholding democracy and facilitating open dialogue, the United Nations welcomed Malaysia's decision to review relevant laws, including the Sedition Act 1948, the Printing and

²³ Asif Mohiuddin, "Introduction: Divergent Trajectories of Human Rights in Egypt and Malaysia," in *Human Rights Law in Egypt and Malaysia: Freedom of Religion and Expression* (Cham: Springer, 2024), 1–33, https://doi.org/10.1007/978-3-031-63859-6_1.

²⁴ Asif Mohiuddin, "Constitutional Status of Religious Freedom in Egypt and Malaysia: A Cross-National Analysis," in *Human Rights Law in Egypt and Malaysia: Freedom of Religion and Expression* (Cham: Springer, 2024), 75–132, https://doi.org/10.1007/978-3-031-63859-6_3.

²⁵ Peter Johan Lor and Johannes Jacobus Britz, "Is a Knowledge Society Possible without Freedom of Access to Information?," *Journal of Information Science* 33, no. 4 (August 1, 2007): 387–97, <https://doi.org/10.1177/0165551506075327>.

²⁶ Mohiuddin, "Democratic Discourse in Context: Malaysia's Approach to Freedom of Expression."

Publishing Act 1984, the Official Secrets Act 1972, and the Film Censorship Act 2002.²⁷ An active and free press is crucial for a progressive society as it promotes the exchange and evolution of ideas, facilitates open dialogue on critical public issues, and holds influential individuals accountable. However, organisations like Article 19 have noted that these laws have been used to silence political opposition and dissent, underscoring the need for comprehensive reform to ensure the right to freedom of expression is effectively protected. The UN anticipates that revising these laws will align Malaysia's legal framework with international human rights standards, thereby ensuring that the rights to freedom of opinion, expression, and information are fully respected.²⁸

Malaysia: A Heavily Censored Country

Media institutions in Malaysia, including both traditional and digital formats, function within a regulatory framework that enables significant governmental control over content and dissemination. This censorship typically targets content deemed politically sensitive, socially controversial, or morally objectionable according to governmental standards. As a result, Malaysia has scored 107 out of 180 points regarding restrictions on press freedom.²⁹

Malaysia's framework of media regulation is underpinned by statutory provisions such as the Printing Presses and Publications Act 1948, the Communications and Multimedia Act 1998, and the Sedition Act 1972, through which the government effectively sustains control over media discourse and publication practices. However, these laws grant authorities the power to restrict or censor content, shut down media outlets, and penalise individuals or organisations that violate regulations.³⁰ To test the direct and contextual impact of criticism thrown at the government, it is mandatory to specify a sociopolitical context rooted in the morals and norms of a country.

Malaysia's diverse ethnic and religious demographics further complicate the media landscape, as certain topics may be sensitive or controversial within specific communities. This is why the policy of 3R: Royalty, Race, and Religion was created.³¹ This dynamic adds another layer to censorship practices, as authorities may censor content to maintain social harmony or appease certain groups. The challenge lies in

²⁷ Elvin Ong, "Online Repression and Self-Censorship: Evidence from Southeast Asia," *Government and Opposition* 56, no. 1 (January 30, 2021): 141–62, <https://doi.org/10.1017/gov.2019.18>.

²⁸ Mohiuddin, "Democratic Discourse in Context: Malaysia's Approach to Freedom of Expression."

²⁹ Md. ZahidulIslam et al., "Regulating Online Broadcast Media against Offensive Materials in Malaysia," *Indian Journal of Science and Technology* 14, no. 15 (April 21, 2021): 1233–38, <https://doi.org/10.17485/IJST/v14i15.595>.

³⁰ Mohd Azizuddin Mohd Sani, "Media Freedom in Malaysia," *Journal of Contemporary Asia* 35, no. 3 (January 2005): 341–67, <https://doi.org/10.1080/00472330580000201>.

³¹ Abd Aziz A'zmi et al., "Realiti Kepelbagaian Kaum Ke Arah Perpaduan Nasional Pasca Merdeka," *Malaysian Journal of Social Science* 2 (2017): 1–24, <https://unimel.edu.my/journal/index.php/JSS/article/view/448/379>.

balancing freedom of speech with maintaining social harmony, as appeasing one group might harm another, making total social harmony impossible.

While restrictions are imposed to keep order, they can encroach on freedom of expression. The question is: how much restriction is acceptable without infringing on this freedom, especially in today's politically charged environment, where everyone wants their voice heard? for example, has historically treated criticism expressed by citizens, especially towards government officials, as a threat that may lead to riots or uprisings. The authorities should have selectively tolerated grassroots criticism of the government as a barometer of public opinion. However, Malaysia's authorities shut the people down with an excuse to prevent a potential uprising and to avoid being held accountable, especially by public officials.³²

Taking a case as an example, on March 9, 2024, Menteri Datuk Besar Seri Saarani Mohamad highlighted the importance of Perak Government Ministers addressing public complaints positively rather than defensively.³³ Government officials should view complaints as valuable feedback that can enhance the quality of services provided by various government departments. This can be related to the case of *Mkini Dotcom Sdn Bhd v Home Minister (2021) 3 CLJ 603*, where the Home Minister denied the renewal of the publishing permit. *Malaysiakini* challenged the denial, arguing that it was arbitrary and violated their constitutional rights to freedom of expression and the press as provided in the Printing Presses and Publication Act.³⁴

The court ruled in favour of *Malaysiakini* and stated the Home Minister's decision was an abuse of power and lacked justification. The idea of the government genuinely listening to the concerns of ordinary citizens and promoting good governance isn't commonly seen in Malaysia's long legal history. A leader who is open to public opinion may be seen as benevolent, deserving praise for their willingness to listen and consider concerns.³⁵

Furthermore, the government is not granted unrestricted authority to introduce any new legislation restricting freedom of expression beyond what is outlined in Article 10 (2) of the Federal Constitution. Nonetheless, the government affirms the principle of 3R, which remains off-limits in discussions, yet does not impede freedom of speech as it is covered under Article 10 (4) of the Federal Constitution. The Malaysian Communications Minister, Fahmi Fadzil, stated that in the current

³² Syaza Shukri, "Digital Authoritarianism and Religion in Malaysia," in *Digital Authoritarianism and Its Religious Legitimization* (Singapore: Springer Nature Singapore, 2023), 81–107, https://doi.org/10.1007/978-981-99-3600-7_4.

³³ Ivy Lim, Jeng Yee, and Nor Kamariah Kamaruddin, "Relationship between Perceived Ease of Use and Perceived Usefulness towards Adoption Intention of Smart Home Technology among Government Servants in Kinta, Perak," *Research in Management of Technology and Business* 5, no. 1 (2024): 826–39, <https://doi.org/https://doi.org/10.30880/rmtb.2024.05.01.057>.

³⁴ Teoh Shu Yee, Safinaz Mohd. Hussein, and Shahrul Mizan Ismail, "Case Analysis on the Liability of Internet Content Provider for Contempt of Court," *Jurnal Undang-Undang Dan Masyarakat* 33 (December 13, 2023): 21–28, <https://doi.org/10.17576/juum-2023-33-02>.

³⁵ Shu Yee, Mohd. Hussein, and Ismail.

unity government, it prioritises the right to freedom of speech, which is a fundamental right of every Malaysian citizen.³⁶ However, this principle does not justify making baseless accusations or statements that could harm the country's democracy, as outlined in Section 3 of the Sedition Act or the Official Secrets Act 1972, which legalises the State's interference with and meddling in the freedom of every citizen to criticise government policy.

While every citizen has the right to express their opinions, they must do so within the bounds of respect for the 3R concept. Consequently, many newspaper articles report that individuals, particularly writers addressing contentious issues, are facing legal consequences for criticising the government.³⁷ According to an article by Paul Bischoff, Malaysia was labeled as one of the countries with the lowest levels of internet freedom, attributed to its limitations on social media, political journalism, and access to pornography and torrenting sites. The report titled "Internet Censorship 2024: A Global Map of Internet Restriction" rated Malaysia's censorship level at 6 out of 10, with 10 representing the highest degree of censorship, noting its compliance with regulations for curbing social media content and political reporting. Starting from July 2015, the Malaysian government has reportedly restricted access to at least ten websites, which include online news portals and personal blogs.³⁸

These restrictions were purportedly implemented due to their connection to a scandal involving Najib Tun Razak, the former Prime Minister, and undisclosed transactions amounting to \$700 million.³⁹ Determining the boundaries of Article 10(4) of the Federal Constitution in criticism or the expression of opinions towards leaders or the government remains a challenge, as it is uncertain whether a viewpoint could be deemed seditious under the Sedition Act 1948, since criticism of the governing body does not necessarily threaten public peace or security.

This restriction on freedom is often experienced by writers or journalists, particularly regarding press freedom, which is not explicitly outlined in the Federal Constitution. However, it closely aligns with the freedom of authority, granting them the right to disseminate their perspectives through their writings and coverage, thus ensuring the transmission of current news to the public.

Decline of Freedom Leads to Social Vulnerability

As noted earlier in this article, while freedom of expression may not be the sole determinant of a free society, it nonetheless constitutes a fundamental human

³⁶ Shukri, "Digital Authoritarianism and Religion in Malaysia."

³⁷ Mohd Azizuddin Mohd Sani, "Freedom of Speech and Democracy in Malaysia," *Asian Journal of Political Science* 16, no. 1 (April 26, 2008): 85–104, <https://doi.org/10.1080/02185370801962440>.

³⁸ Jonathan L. Zittrain et al., "The Shifting Landscape of Global Internet Censorship," *SSRN Electronic Journal*, 2017, <https://doi.org/10.2139/ssrn.2993485>.

³⁹ Clare Rewcastle Brown, "Malaysia: A Case Study in Global Corruption," in *Investigative Journalism* (London: Routledge, 2021), 187–202, <https://doi.org/10.4324/9780429060281-17>.

necessity inherent to individual dignity and autonomy. Freedom of expression is considered one of the first aspects of freedom that is looked upon.⁴⁰ This contrasts with the authorities in Malaysia, who often launch criminal investigations in response to criticism of the government.⁴¹ Several journalists, civil society activists, and ordinary citizens have faced police investigations for peacefully expressing their opinions, which violates the right to freedom of speech due to broadly defined laws. Citizens have the right to criticise their elected government, and it is concerning to see how these actions undermine fundamental freedoms and limit democratic discourse in Malaysia. Additionally, it is worth noting that numerous international human rights organisations and activists have scrutinised these actions by Malaysian authorities.⁴²

Concerns about freedom of expression and civil liberties in Malaysia have been raised due to the use of ambiguous laws to suppress disputes. Cases where people are penalized simply for peacefully articulating their viewpoints stress the necessity for enhanced protection of basic rights and a reassessment of current laws to guarantee they meet global human rights criteria. The government has become increasingly intolerant of criticism, dismissing constructive feedback as mere personal opinion. Complicating matters further are government officials who suppress criticism, particularly from journalists aiming to publish such articles.

In some instances, this leads to declining freedom of expression and social vulnerability in Malaysia's democracy, as media censorship and legal constraints contribute to social vulnerability.⁴³ Individuals, particularly journalists, face greater risks or threats such as censorship, legal actions, or harassment when they try to express dissent or provide constructive criticism of a government's actions or policies. The government's increasing intolerance of criticism leads to censorship and legal constraints, endangering those who speak out. This undermines their ability to participate in democracy, weakening Malaysia's democratic fabric.⁴⁴

The court's reasoning, which underscores the need to balance a politician's right to reputation with the public's interest in open political discourse, reflects the fundamental role of freedom of expression within a democratic framework. It further affirmed that any limitation imposed on speech must be prescribed by law and directed toward a legitimate objective, such as the preservation of public order. This principle was articulated in *Ling Wah Press (M) Sdn Bhd & Ors v Tan Sri Dato' Vincent Tan Chee Yioun* (2000) 4 MLJ 77, wherein the court clarified that defamation

⁴⁰ Masferrer, "The Decline of Freedom of Expression and Social Vulnerability in Western Democracy."

⁴¹ Lasse Schuldt, "Official Truths in a War on Fake News: Governmental Fact-Checking in Malaysia, Singapore, and Thailand," *Journal of Current Southeast Asian Affairs* 40, no. 2 (August 26, 2021): 340–71, <https://doi.org/10.1177/18681034211008908>.

⁴² ZahidullIslam et al., "Regulating Online Broadcast Media against Offensive Materials in Malaysia."

⁴³ Ruji Auethavornpipat, "Hate Speech and Incitement in Malaysia," *SSRN Electronic Journal*, 2021, <https://doi.org/10.2139/ssrn.4063073>.

⁴⁴ Meredith L Weiss, "Is Malaysian Democracy Backsliding or Merely Staying Put?," *Asian Journal of Comparative Politics* 9, no. 1 (March 21, 2024): 9–24, <https://doi.org/10.1177/20578911221136066>.

cannot be equated with the exercise of free expression, as the right to speech is subject to lawful restrictions designed to prevent unwarranted injury to others' reputations. Consequently, the court emphasized that the legal protection of an individual's reputation constitutes a legitimate and enforceable limitation within the scope of freedom of expression.

In the context of Malaysia's decline in freedom of expression, the punishment of citizens for voicing their opinions on political matters, such as the 1 Malaysia Development Berhad (1MDB) scandal, in the absence of any constitutional prohibition against such expression, underscores the lack of justification for the restrictions imposed by the government. Despite the absence of legal grounds to limit free speech, individuals are still detained or punished, demonstrating the government's disregard for democratic principles and its tendency to suppress dissenting voices.⁴⁵

The issue of suppressing criticism was less significant during the administrations of Mahathir and Tun Abdullah Ahmad Badawi. Still, it intensified during Najib's tenure, especially after the defeat of the UMNO government by the Pakatan Harapan coalition. This escalation occurred amidst allegations of corruption related to the misuse of the 1MDB scheme. In 2016, journalists and critics of Najib and 1MDB were detained and fined in an effort to conceal information about the scandal from the public. The government cracks down on news sites, blogs, and social media posts discussing sensitive topics, such as the scandal involving former Prime Minister Najib Tun Razak and \$700 million in unexplained funds, to control the narrative and limit opposition. In Malaysia, where democracy mixes with authoritarianism, media bias is widely acknowledged as a significant barrier to constructive public discourse because the government has always controlled the media.⁴⁶

The decline in freedom of speech has a significant impact on civil society, as both academics and ordinary individuals can face scrutiny and legal consequences for speaking out. This fear prevents open discussion and sharing of ideas, which are vital for a healthy democracy. Taking Russia as an example, the European Court of Human Rights in *Handyside v the United Kingdom (1976) ECHR 5* highlighted the importance of a free press in a democratic society, emphasising that the media should be protected by freedom of expression.

Critical Crackdown: Statutes to Suppress Political Crisis

In 1988, Anwar Ibrahim, who was then the Deputy Prime Minister and is now the current Prime Minister, became the face of the reformasi movement, Malaysia's most significant democratic movement. He was fired by Mahathir Mohamad for

⁴⁵ Brown, "Malaysia: A Case Study in Global Corruption."

⁴⁶ Abdul Muein Abadi, "Kleptocracy, Strategic Corruption, and Defence Policymaking: The Impact of Najib Razak's 1MDB Scandal on Malaysia's Defence Relationship with China (2015–2017)," *Contemporary Politics* 27, no. 5 (October 20, 2021): 508–27, <https://doi.org/10.1080/13569775.2021.1917163>.

criticising Mahathir's handling of the Asian Financial Crisis while serving as finance minister. The reformasi movement gained momentum during the Commonwealth Games in Malaysia, calling for Mahathir's resignation as Prime Minister and an end to the Barisan Nasional-led government. It evolved into a campaign for social equality and justice in Malaysia, marked by protests that included civil disobedience, demonstrations, sit-ins, riots, occupations, and online activism. Prime Minister Mahathir fired Anwar Ibrahim from his positions as Deputy Minister and Minister of Finance on September 2nd, 1998.⁴⁷

Two days later, Malaysian newspapers reported allegations of heterosexual sex involving Anwar, which Mahathir used to justify his arrest and dismissal. On September 20th, 1998, after leading a large rally in Kuala Lumpur during the Commonwealth Games and Queen Elizabeth II's visit to Malaysia, Anwar was arrested and detained under the Internal Security Act. Mahathir claimed to have conducted his own extensive investigation, leading him to believe in Anwar's guilt:⁴⁸

The rise of the reformation movement in Malaysia led to numerous abuses of the restrictions outlined in the Sedition Act, particularly as Anwar Ibrahim openly criticised the law as outdated and manipulated for suppressing political dissent and freedom of speech. His reformist agenda consistently called for the repeal or significant amendment of the act to align with democratic principles and human rights standards.⁴⁹ This movement underscored the urgent need for legal and institutional reforms, including changes to laws such as the Sedition Act, which stifled political opposition. As the reformation party gained support, more people began to voice their opinions against Mahathir's rule, prompting him to invoke the Sedition Act against demonstrators.

Anwar himself faced politically motivated charges, including sodomy and corruption, highlighting concerns about judicial independence and the misuse of legal provisions such as the Sedition Act to target political opponents. The political background of Anwar Ibrahim's sodomy trial suggests Karpal Singh was charged with sedition to hinder Anwar's defence, as the court suspected foul play.⁵⁰ A year earlier, the Malaysian Chief of Police allegedly beat Singh's client in custody, sparking calls for a public investigation.

In response, Mahathir suggested the injuries could have been self-inflicted. The prosecution of Karpal Singh and others for sedition drew criticism from

⁴⁷ Ifa Sirrhu Samsudin, Ramalingam Rajamanickam, and Rohaida Nordin, "Roles of Human Rights Bodies on Chain Remand Complaints in Malaysia," *Cogent Social Sciences* 8, no. 1 (December 31, 2022), <https://doi.org/10.1080/23311886.2022.2095079>.

⁴⁸ Syaza Shukri, "Anwar Ibrahim," in *Elite Populism and Malay Political Leaders in Malaysia* (Singapore: Springer Nature Singapore, 2024), 163–97, https://doi.org/10.1007/978-981-97-6301-6_7.

⁴⁹ Ahmad Fauzi Abdul Hamid and Che Hamdan Che Mohd Razali, "Race, Religion and Royalty in Malaysian Politics," in *Race, Religion, Royalty in Malaysia* (Cham: Springer Cham, 2025), 23–37, https://doi.org/10.1007/978-3-031-94985-2_2.

⁵⁰ Meredith L. Weiss, "Malaysia's Anwar, Anwar's Malaysia," *Current History* 122, no. 845 (September 1, 2023): 217–23, <https://doi.org/10.1525/curh.2023.122.845.217>.

international human rights groups, who saw it as selective prosecution and misuse of legal statutes to silence critics and stifle political opposition. This raises concerns about free speech and democratic values in Malaysia, highlighting potential misuse of the Sedition Act to intimidate opposition figures. The reformist party shed light on how the Sedition Act is used in Malaysia, especially against opposition members or activists critical of the government.⁵¹ An example is the case of Public Prosecutor v Param Cumaraswamy [1986] CLJ 606, where Cumaraswamy faced sedition charges for statements made during a press conference. The court ruled that the words spoken must have the potential to stir discontent among the people or rulers of Malaysia.

In September 1998, Wan Azizah, the wife of Anwar Ibrahim, was arrested under the Sedition Act for expressing concern about her husband's mistreatment by the Chief of Police.⁵² so this raises questions about the fairness of the Sedition Act under Mahathir Mohamad's leadership, as expressing concern did not incite anger toward the Agong but rather toward Mahathir. Interestingly, Mahathir, whose statements could be interpreted as seditious under the same act, was not subject to arrest.

During Mahathir Mohamad's time in office, in the case *Lim Guan Eng v PP [1998] 3 MLJ 14*, Lim Guan Eng, an opposition Member of Parliament, was sentenced to 18 months in prison for speaking out about a statutory rape case. He criticised the Attorney General for bias, questioning why the victim was detained while the Chief Minister of Melaka, one of the accused, faced no charges. Despite Lim's earlier report of corruption involving the Chief Minister, it was he who was charged. According to Lim, this shows unfair treatment under the law. Lim's case also sparked international criticism for limiting freedom of speech and intolerance of dissent.⁵³

In another incident, the government threatened to ban *Asiaweek* for publishing articles on the conflicts between Mahathir and his deputy, Anwar Ibrahim, under the Printing Presses and Publications Act 1984 (PPPA). The issue arose again over allegedly seditious writings about the dispute between Mahathir and Anwar Ibrahim, where Mahathir tightened the use of the Sedition Act and Printing Presses and Publications Act to limit freedom of speech. Critics argue that laws such as the Sedition Act, Printing Presses and Publications Act, and Multimedia Act are used selectively against opposition politicians, activists, and journalists who are critical of the government. They cite biased law enforcement and court cases as evidence of

⁵¹ Su Mei Kok, "The Pate of a Politician: Anwar Ibrahim and the Political Appropriation of Shakespeare in the Press and on Social Media," *Shakespeare* 21, no. 3 (July 3, 2025): 613–32, <https://doi.org/10.1080/17450918.2025.2516498>.

⁵² Shukri, "Anwar Ibrahim."

⁵³ Imaduddin Suhaimi, "Media Arbitration Schemes: Addressing the Backlog of Defamation Cases in Malaysia," *Asian Journal of Comparative Law* 16, no. 1 (July 2, 2021): 84–105, <https://doi.org/10.1017/asjcl.2021.11>.

unfairness and abuse of power to silence dissent, including accusations against Tun Abdullah Ahmad Badawi for misusing these laws to suppress freedoms.⁵⁴

In one case, Mohamad Ezam Mohamad Nor was held incommunicado, prompting calls for his immediate release by Amnesty International. His detention, under the Internal Security Act (ISA), was condemned by Amnesty International as a violation of human rights. It reflected the broader issue of silencing political dissent and preventing free expression, as individuals critical of the government faced legal harassment and intimidation.⁵⁵ This case illustrates how such practices undermine democratic principles and discourage open political discourse.

During Abdullah's time, dissent was tightly controlled, with instances of excessive force used to detain people. For example, opposition MP Lim Lip Eng was beaten by security personnel. Parliament delayed discussing the Special Complaints Commission Bill, which aimed to oversee police misconduct and faced criticism from human rights groups. After Abdullah, Najib became known for limiting citizens' freedoms. In the 14th General Election, Malaysians voted against him, leading to Mahathir becoming the Interim Prime Minister. Mahathir promised to reopen Najib's corruption case, which had been silenced by the media using the Sedition Act 1948.

Muhyiddin Yassin became the Caretaker Prime Minister, sparking disagreement among the media and citizens. The Cabinet approved the enforcement of the Sedition Act concerning the Sri Maha Mariamman Temple riot in Seafield, Subang Jaya. Muhyiddin treated any criticism against him as a crime against the government, prompting Mahathir to compare his tactics to Najib Razak's during the 1MDB era.⁵⁶ Fahmi Reza, a political graphic designer and activist, was charged under the Sedition Act for his satirical artwork criticising government corruption and abuse of power, as seen in the case of *Fahmi Reza v Pendakwa Raya* [2020] 7 MLJ 399. Fahmi Reza's detention sheds light on how the Malaysian government deals with criticism by restricting media and artistic expression.

In *PP v Azmi Sharom* [2015] 8 CLJ, legal and political issues in Malaysia were highlighted when Azmi Sharom was charged with sedition for his comment, showing how the Sedition Act is used differently from its intended purpose. Azmi Sharom's case illustrates the suppression of academic freedom, a fundamental liberty for Malaysians, as a means to divert attention from political crises through the legal system. While the Sedition Act aims to prevent seditious comments that could incite hatred or contempt against any ruler or government, Section 3(2)(b) of the Sedition

⁵⁴ Kumaran Rajandran and Charity Lee, *Discursive Approaches to Politics in Malaysia: Legitimising Governance*, ed. Kumaran Rajandran and Charity Lee, vol. 18, Asia in Transition (Singapore: Springer Nature Singapore, 2023), <https://doi.org/10.1007/978-981-19-5334-7>.

⁵⁵ Rajandran and Lee.

⁵⁶ Noore Alam Siddiquee and Habib Zafarullah, "Absolute Power, Absolute Venality: The Politics of Corruption and Anti-Corruption in Malaysia," *Public Integrity* 24, no. 1 (January 2, 2022): 1–17, <https://doi.org/10.1080/10999922.2020.1830541>.

Act itself provides exceptions, allowing criticism to point out errors or defects in any government or constitution established by law. Many of these cases did not even involve sensitive topics like 3R, which Malaysia deems as sensitive.

Instead, the cases voiced discontent with government errors and biases. However, these individuals still faced fines or imprisonment, such as Sevan Doraisamy, the head of the human rights group SUARAM, who was questioned under the Sedition Act for commenting on the arrest of fellow activists.⁵⁷ This instance illuminated the targeting of human rights defenders and underscored the crackdown on civil society organisations. During Muhyiddin Yassin's tenure, laws like the Sedition Act were used to target critics of the government's COVID-19 response and the movement control order. These laws were also used against #Lawan's protest leaders, who demanded his resignation.⁵⁸

Former Prime Minister Ismail Sabri Yaakob exemplified the trend of abusing laws for personal interests, often without proper investigation into whether statements or opinions were truly seditious. This was evident when Al Jazeera journalists were investigated under the Sedition Act for their documentary on the Malaysian government's treatment of migrant workers during the COVID-19 pandemic.⁵⁹ This case highlights concerns about press freedom, showing how journalists face limitations and fear of retribution when reporting on sensitive issues.

1MDB Case and the Abuse of the Sedition Act

The restriction on freedom of expression and speech in Malaysia may not seem like a significant issue, as it has been justified under the Federal Constitution. However, following the 1MDB scandal, expressing opinions has begun to land people in jail, even though there are no specific laws forbidding it. This raised concerns because discussing the scandal is not considered a sensitive issue in Malaysia. The 1MDB scandal, which is frequently discussed globally as either the 1MDB scandal or just 1MDB because of its high-profile nature, is a continuous controversy involving a conspiracy of corruption, bribery, and money laundering. This scheme allegedly involved the systematic misappropriation of assets from the Malaysian sovereign wealth fund, 1MDB, by perpetrators who dispersed these assets across the world.⁶⁰

The case began in 2009, but grew larger as more countries became involved. In 2016, the United States described it as one of the largest financial scandals ever and stated

⁵⁷ Syaza Shukri, *Elite Populism and Malay Political Leaders in Malaysia*, Palgrave Studies in Populisms (Singapore: Springer Nature Singapore, 2024), <https://doi.org/10.1007/978-981-97-6301-6>.

⁵⁸ Naimah S. Talib, "Democratic Backsliding in Malaysia: Executive Aggrandizement Under Muhyiddin Yassin's Government," in *Democratic Recession, Autocratization, and Democratic Backlash in Southeast Asia* (Singapore: Springer Nature Singapore, 2023), 117–38, https://doi.org/10.1007/978-981-19-9811-9_5.

⁵⁹ Talib.

⁶⁰ Fahmi Bin Adilah et al., "A Study of Malaysian Anti-Money Laundering Law and the Impact on Public and Private Sector," *Journal of Money Laundering Control* 26, no. 4 (May 30, 2023): 831–44, <https://doi.org/10.1108/JMLC-02-2022-0035>.

that it involved significant corruption.⁶¹ In 2015, leaked documents obtained by *The Edge*, *Sarawak Report*, and *The Wall Street Journal* disclosed that Malaysia's then–Prime Minister, Najib Razak, had allegedly transferred approximately RM2.67 billion (equivalent to about US\$700 million) from the state-owned development entity, 1Malaysia Development Berhad (1MDB), into his personal bank accounts. Jho Low, widely identified as the principal architect behind the scheme, was instrumental in orchestrating the transnational movement of 1MDB's financial assets. By 2018, investigations conducted by the United States Department of Justice determined that Low and several accomplices—including government officials from Malaysia, Saudi Arabia, and the United Arab Emirates—had misappropriated in excess of US\$4.5 billion from the fund.⁶²

The misappropriated funds were used to acquire various luxury assets, such as high-value real estate and the superyacht *Equanimity*, and to finance *Red Granite Pictures*, the production company behind *The Wolf of Wall Street*. These expenditures sustained the extravagant lifestyles of Jho Low, former Prime Minister Najib Razak, his spouse Rosmah Mansor, and Najib's stepson, Riza Aziz, who benefited from the funds for ventures in Hollywood. Portions of the embezzled money were also reportedly channelled toward political contributions and lobbying activities in the United States, precipitating one of Malaysia's most prominent political scandals and triggering widespread public protests and political unrest. In retaliation, Najib dismissed several government critics. Although the charges against him were initially withdrawn, they were subsequently reinstated in 2018 following the election of Prime Minister Mahathir Mohamad.⁶³

Up to 2018, Najib Razak used the Sedition Act to silence criticism about the 1MDB scandal, amending the Act to increase penalties and remove online material about him. By the end of 2016, around 170 people, mostly activists, journalists, and opposition members, were charged, arrested, or investigated for sedition. Najib's political downfall also had profound repercussions for *Barisan Nasional*, as the proliferation of online media coverage brought extensive public attention to the 1MDB scandal and the party's alleged corruption. In response to the growing criticism, restrictions on media freedom intensified. Following its investigative coverage of the 1MDB affair, *The Malaysian Insider* (TMI) faced a crackdown in 2016, with the arrest of several of its editors. Subsequently, the Malaysian Communications and Multimedia Commission (MCMC) blocked public access to the online news portal, reportedly utilizing the Sedition Act to justify the action.⁶⁴

⁶¹ Brown, "Malaysia: A Case Study in Global Corruption."

⁶² David Seth Jones, "1MDB Corruption Scandal in Malaysia: A Study of Failings in Control and Accountability," *Public Administration and Policy* 23, no. 1 (April 6, 2020): 59–72, <https://doi.org/10.1108/PAP-11-2019-0032>.

⁶³ Duncan Smith, "Other Money Laundering Cases," in *Money Laundering, Terrorist Financing and Virtual Assets* (Cham: Springer Cham, 2024), 121–78, https://doi.org/10.1007/978-3-031-59842-5_10.

⁶⁴ Ric Neo, "The Failed Construction of Fake News as a Security Threat in Malaysia," *Contemporary Politics* 27, no. 3 (May 27, 2021): 316–35, <https://doi.org/10.1080/13569775.2021.1884397>.

In 2018, the Barisan Nasional-led Parliament passed an Anti-Fake News Bill, further curtailing freedom of speech and expression in Malaysia.⁶⁵ This law, with its vague definition of "fake news," led to public outcry and protests against BN's intimidation and silencing of dissent, causing significant unrest and calls for reform. Najib Razak misled the public by citing Lim Kit Siang, who was investigated but not charged for sedition, to suggest leniency. However, Najib's real aim was to silence dissent, resulting in an unprecedented crackdown on free expression. This period marked the darkest time in Malaysia's history for free speech.

The severe application of the Sedition Act during Najib's leadership prompted probes into allegations of power abuse targeting him, along with former officials like Attorney-General Abdul Gani Patail and Inspector-General of Police Khalid Abdul Bakar, and various other individuals involved in suppressing dissent. While the Sedition Act can help maintain peace and order, Najib Razak's use of it to suppress the 1MDB scandal shows the danger of autocratic government abuse. This misuse highlights how Malaysia's system failed to protect fundamental rights and instead violated them. During Najib's tenure, political cartoonist Zunar faced multiple sedition charges for his cartoons criticising government corruption and the 1MDB scandal.⁶⁶

Zunar's satirical art, which highlighted issues of corruption and abuse of power, led to government retaliation, including arrests and the banning of his work. Zunar's legal troubles were part of a broader crackdown on freedom of expression, with laws like the Sedition Act used to silence critics. Despite facing threats and legal action, Zunar continued advocating for political reform and press freedom.⁶⁷ His case drew international condemnation from human rights organisations for suppressing free speech.

Tony Pua v. Government of Malaysia [2020] 1 CLJ brings evidence of how an opposition member of Parliament had to face sedition charges for remarks he had made in a forum, as he discussed how the government handled the 1MDB scandal and how corrupt the financial mismanagement of the Malaysian government at the time was. The case was premised on the concept of vicarious liability, implying the Government could be held responsible for the actions or failures of the former Prime Minister. In reply to the accusation, Najib and the Malaysian Government sought to dismiss the claim with the argument that the former Prime Minister is not a 'public officer' or 'person holding public office' as required by the misfeasance in

⁶⁵ Mohd Azizuddin Mohd Sani, "Election Law in Malaysia," in *Routledge Handbook of Election Law* (London: Routledge, 2022), 306–18, <https://doi.org/10.4324/9780429401800-25>.

⁶⁶ Lasse Schuldt, "Shaping the Fake News Discourse: Laws, Electoral Arenas and the Emergence of Truth as a Public Interest," in *Fake News and Elections in Southeast Asia* (London: Routledge, 2022), 16–44, <https://doi.org/10.4324/9781003342915-2>.

⁶⁷ Mohiuddin, "Democratic Discourse in Context: Malaysia's Approach to Freedom of Expression."

public office tort, which had been referred to Section 5 of the Government Proceedings Act 1956.⁶⁸

In *Mohd Rafizi Ramli v. Public Prosecutor (2017) 7 MLJ 150*, an opposition party member was charged under the Official Secrets Act (OSA) for statements about financial irregularities in the National Feedlot Corporation (NFC) scandal. He alleged that government loan funds meant for the NFC project were misappropriated as leverage for personal loans to purchase properties. These allegations were based on documents he claimed to have received anonymously. However, the court found his statements defamatory as they lacked factual basis and verification.

Although some considered his comments seditious, he was not prosecuted under the Sedition Act. This case highlights how legal mechanisms were utilised during Najib Razak's tenure to target and silence political opponents and whistleblowers. Rafizi could not seek protection under the Whistleblower Protection Act, as it does not adequately protect those acting outside prescribed legal channels.⁶⁹ This case highlights a significant flaw in Malaysian law, underscoring the need for a stronger framework to protect individuals who expose wrongdoing in the public interest.⁷⁰ It stands as a landmark case, highlighting the challenges faced by those who expose government corruption and are suppressed through various legal statutes.

Criminalisation of the Right to Dissent in Malaysia

It is often asserted that democracy cannot thrive without freedom of expression, as this freedom provides the necessary space for diverse, minority, and dissenting viewpoints to be articulated. The capacity for dissent, therefore, constitutes the very essence of democratic governance, and the suppression of dissent inevitably undermines the foundation of deliberative democracy. In a lecture organized by the Supreme Court Bar Association, it was further emphasized that majority rule represents an indispensable element of a functioning democratic system. Nonetheless, this principle should not be conflated with majoritarianism, as genuine democracy requires the protection of minority voices and the maintenance of a balanced and inclusive political discourse.⁷¹

⁶⁸ Debbita Ai Lin Tan, "Mocking the Powers That Be: The Case of Culture and Political Humor in Malaysia," in *Communicating Political Humor in the Media* (Singapore: Springer Nature Singapore, 2024), 223–39, https://doi.org/10.1007/978-981-97-0726-3_11.

⁶⁹ Mohd Al Omar Che Abu Bakar and Mazlina Mohamad Mangsor, "It's Not Enough to Speak, But to Speak True: Revisiting the Whistleblower Protection Law in Malaysia," *Malaysian Journal of Social Sciences and Humanities (MJSSH)* 7, no. 11 (November 30, 2022): e001949, <https://doi.org/10.47405/mjssh.v7i11.1949>.

⁷⁰ Amanda Whiting, "Rebooting the Emergency: Najib's Law 'Reform' and the Normalisation of Crisis," in *Illusions of Democracy* (Amsterdam: Amsterdam University Press, 2019), 59–84, <https://doi.org/10.1017/9789048542666.006>.

⁷¹ Imer B. Flores, "The Democratic Principle and the Tyranny of the Majority," in *Contemporary Facets of Injustice* (Cham: Springer Cham, 2025), 95–110, https://doi.org/10.1007/978-3-031-93783-5_7.

This statement emphasises the importance of tolerance in a diverse democracy, where dissenters who express disagreement and provide reasons that fuel public debate challenge the dominant views, policies, or ideas enforced by authorities. A dissenter is someone with opposing views to the majority. While some see dissent as a challenge, it is important because it encourages diverse perspectives and helps improve discussions on what is best for society.⁷² There exists an argument saying that society can be saved by those who choose to love their enemies rather than engage in a culture of contempt towards them.

In a plural democracy, disagreement is essential for coexisting with people who have different views. The right to dissent is a crucial aspect of international law, ensuring that everyone can participate in public affairs by expressing criticism, opposing policies, or offering alternative perspectives. Dissent can appear in various forms, including vocal disagreement, civil disobedience, or even violence. Examples include protests, demonstrations, peace marches, and boycotts, like the public's efforts to eliminate Israeli products in Malaysia and boycotts against major influencers who do not support the people of Palestine.⁷³

Democracy depends on dissent, which, though tied to freedom of speech, involves challenging official positions. Governments often see dissenters as troublemakers who could cause unrest. Even though freedom of speech is a fundamental right, peaceful protests are sometimes seen as threats, with dissenters being criticised for disturbing social order. An example of this statement is the international students at Harvard who protested against their fees supporting Israeli activities and were faced with reprimands and expulsions. Even in the United States, known for its freedom, criticising government actions in the Palestinian conflict reveals limitations to speech liberties, which are confined to what the government finds acceptable.⁷⁴

In Malaysia, instances have arisen where the government has reacted harshly to criticism, often resorting to legal penalties even for mere expressions of opinion. The media has brought several such cases to public attention, highlighting the government's tendency to initiate intrusive investigations on dubious grounds in response to public dissent.⁷⁵ This can be a point where the Sedition Act 1948 was used to prohibit actions, speeches, or even writing that seemingly 'incite' hatred or discontent against the government, the monarch or even the administration of

⁷² Antis Loizides, Andreas Neocleous, and Panagiotis Nicolaidis, "Did John Stuart Mill Write 'On Social Freedom'?" *Humanities* 12, no. 5 (October 17, 2023): 123, <https://doi.org/10.3390/h12050123>.

⁷³ Uus Ahmad Husaeni and Mohammed Ashfaq Ayoob, "Determinants of Muslim's Intention to Boycott Israel-Affiliated Products: Evidence from Indonesia," *Jurnal Ekonomi & Keuangan Islam* 11, no. 1 (January 22, 2025): 14–28, <https://doi.org/10.20885/JEKI.vol11.iss1.art2>.

⁷⁴ Rini Jarwati Indah N. C et al., "Freedom of Expression in the Spread of Hoax News on Social Media Between Indonesia and South Korea," *Journal of Indonesian Constitutional Law* 1, no. 3 (2024): 246–62, <https://doi.org/https://doi.org/10.71239/jicl.v1i3.12>.

⁷⁵ Najib et al., "Regulation on Freedom of Expression on Social Media in Indonesia and Malaysia."

justice. Critics pointed out how it had been misused through the case of *Uthayakumar a/l Ponnusamy v Public Prosecutor* [2014] 4 MLJ where P.Uthayakumar is a lawyer and political activist charged under the Sedition Act for allegedly inciting racial discord after publishing a letter critical of the government, and he had to serve a prison term as a punishment.

In the infamous case of right to dissent in *PP v Azmi Sharom* [2015] 6 MLJ 774, the court upheld the constitutionality of the Sedition Act 1948, which should not discriminate against academic discourse nor legitimate criticism of government policies. It emphasises how the act should not be subject to criticism towards the government solely as seditious, even if it is only a thought by the people. Similarly, the Official Secrets Act 1972 (OSA) has been used against Anwar Ibrahim to impose strict penalties on individuals who disclosed any information that could be subject to national security. *PP v Anwar Ibrahim* [1999] 2 MLJ 1 pointed out how OSA had been used in high-profile prosecutions, which concern the potential of misuse to suppress whistleblowing and investigate journalism.

Anwar Ibrahim was charged and convicted on allegations of corruption and sodomy, which he claimed were politically motivated. The OSA was used to restrict the disclosure of information that might have been beneficial to Anwar's defense. Critics argued that the selective application of the law pointed to its potential for misuse, allowing those in power to protect themselves and suppress information that could expose government wrongdoing. The Peaceful Assembly Act 2012 was showcased as being used to silence the people, but not as much as the Sedition Act. The case of *Tan Sri Musa bin Dato' Hj Hassan & Ors v Uthayakumar a/l Ponnusamy* [2011] MLJU 755, or known as the Hindraf Rally case, is explained. The Hindu Rights Action Force (Hindraf) organised a protest rally in 2007, demanding greater rights for the Indian minority community.

The authorities banned the rally, and the participants faced legal action under the Sedition Act and other laws. This case demonstrated the criminalisation of peaceful dissent and the restrictions on public protests. Meanwhile, the Communication and Multimedia Act 1998 (CMA) had also been subject to criticism for its broad scope, which created loopholes for authorities to curb online dissent.⁷⁶ Section 233(1)(a) of the CMA penalises the use of network facilities to transmit offensive or malicious content, often used to target individuals who criticize the government or even the monarchs:⁷⁷

So, the basic arguments that are used to back up this abuse are that such a statement is defamation that could ruin the authorities' reputation. Everyone has the right to freedom of speech, and it is crucial to uphold and protect this right for clear and valid reasons. However, it is equally evident that this freedom is often misused.

⁷⁶ Hafidz Hakimi Haron and Farid Sufian Shuaib, "The Malaysian Media Council: Will Self-Regulation Work?," *Asia-Pacific Journal on Human Rights and the Law* 23, no. 3 (November 16, 2022): 354–80, <https://doi.org/10.1163/15718158-23030003>.

⁷⁷ Mohiuddin, "Democratic Discourse in Context: Malaysia's Approach to Freedom of Expression."

With the rise of technology and social media, such abuse has become increasingly common. The importance of maintaining a proper balance between the competing rights was highlighted by the Federal Court in *Ling Wab Press (M) Sdn Bhd & Ors v Tan Sri Dato Vincent Tan Chee Yioun (2000) 4 MLJ 77*, as the court commanded that freedom of speech is not absolute and does not give the right to defame others.⁷⁸ It is subject to legal limits to prevent harm caused by reckless or malicious statements. Protecting a person's reputation is equally important. Article 10 of the Federal Constitution guarantees freedom of speech but allows Parliament to impose restrictions, such as laws against contempt of court, defamation, or incitement to offences.

Chua Tian Chang v PP [2016] MLJU 1747 had proven that those who spoke against the Sedition Act 1948 would only receive punishment of fine or imprisonment at the end of their journey, especially if it were towards the application to silence dissent and criticise the government.⁷⁹ The court held that it was within the citizen's right to criticise the government officials regarding their reign on the administration of Malaysia as long as it does not contradict the element of seditiousness. However, although the law permits the criticism thrown upon them, the government themselves had been reluctant to accept such criticism and instead curtails any statute to prevent further comment about them. In such cases, citizens remain powerless against those with influence, and this has proven to have an even broader scope, illustrating how Malaysia has normalised any act of freedom of speech towards its government.

Freedom of Expression in Other Countries

Southeast Asian countries, such as Thailand, Singapore, and Indonesia, face similar challenges to Malaysia in handling government criticism. Thailand experiences political instability and has strict lese-majeste laws that limit free speech. While the Thai Constitution guarantees freedom of expression, it is constrained by laws such as the lèse majesté provisions (criminalising criticism of the monarchy) and the Computer Crimes Act, which penalises online content deemed false, defamatory, or harmful to national security. Harsh lèse majesté laws penalise criticism of the monarchy with up to 15 years in prison, and the Computer Crimes Act targets online content deemed false or harmful to national security. Government surveillance, censorship, and arrests of activists and protesters are common.⁸⁰ Journalists critical of the government face harassment and censorship, leading to

⁷⁸ Björn Dressel and Tomoo Inoue, "Politics and the Federal Court of Malaysia, 1960–2018: An Empirical Investigation," *Asian Journal of Law and Society* 9, no. 1 (February 14, 2022): 26–58, <https://doi.org/10.1017/als.2020.18>.

⁷⁹ Syaza Shukri, "Digital Authoritarianism: Protecting Islam in Multireligious Malaysia," *Religions* 14, no. 1 (January 9, 2023): 87, <https://doi.org/10.3390/rel14010087>.

⁸⁰ Tyrell Haberkorn, "Under and beyond the Law: Monarchy, Violence, and History in Thailand," *Politics & Society* 49, no. 3 (September 2, 2021): 311–36, <https://doi.org/10.1177/00323292211033073>.

widespread self-censorship. These restrictions significantly limit free expression and democratic rights.

Singapore uses defamation laws to suppress opposition. The government enforces strict censorship on media and online platforms through laws like the Protection from Online Falsehoods and Manipulation Act 2019 (POFMA), targeting content it deems false or harmful.⁸¹ Public speeches and events require permits, especially on sensitive topics like race and religion, and public gatherings are closely monitored. Defamation is criminalised and often used against critics, including opposition figures and journalists, to deter dissent. Even at the Speakers' Corner, the only designated space for public expression, regulations limit topics and participants.⁸² Internet content is also tightly regulated, with authorities monitoring and blocking sites that they believe pose a threat to national interests. These controls prioritise order and harmony over open discourse.

Indonesia, despite being more open, uses blasphemy, defamation, and 'fake news' laws to silence critics, much like Malaysia's Sedition Act. Freedom of speech is protected by the Constitution under Article 28E of the 1945 Constitution, emphasising its importance as a fundamental human right, but it is not absolute.⁸³ Social media is an important platform for expression, but it's regulated by laws like the Information and Electronic Transactions (ITE) Law, which punishes defamation, hate speech, and spreading false information.⁸⁴ While the ITE Law aims to regulate online conduct and promote ethical use of information technology, it has been criticised for vague provisions that can be misused to suppress dissent and stifle criticism. Digital attacks, criminal charges, and intimidation are common, highlighting the challenge of balancing free speech with regulations that promote public order and respect for national values, such as Pancasila.⁸⁵

When comparing Malaysia, Thailand, and Singapore regarding their legal and political frameworks for handling criticism and restricting freedom of expression, all three countries face challenges related to legal constraints on dissent, government control, and international scrutiny. In contrast, the United States is known for its strong legal and cultural protections of freedom of speech, including the right to criticise the government. As a federal republic, the US emphasises democratic

⁸¹ Kenny Chng, "Falsehoods, Foreign Interference, and Compelled Speech in Singapore," *Asian Journal of Comparative Law* 18, no. 2 (August 29, 2023): 235–52, <https://doi.org/10.1017/asjcl.2023.9>.

⁸² Dylan Chamberlin, "Opposite Ends: Why the United States and Singapore Have Drastically Different Models of Free Speech," *The Undergraduate Law Review at UC San Diego* 2, no. 1 (May 25, 2024), <https://doi.org/10.5070/LR3.21257>.

⁸³ Najib et al., "Regulation on Freedom of Expression on Social Media in Indonesia and Malaysia."

⁸⁴ Zico Junius Fernando et al., "The Freedom of Expression in Indonesia," *Cogent Social Sciences* 8, no. 1 (December 2022), <https://doi.org/10.1080/23311886.2022.2103944>.

⁸⁵ Nurul Aisahrani et al., "The Constitutional Protection of Freedom of Artistic Expression: A Comparison between Indonesia, Iran and the United States," *Journal of Indonesian Constitutional Law* 2, no. 2 (2025): 227–48, <https://doi.org/https://doi.org/10.71239/jicl.v2i2.125>.

governance and adherence to the rule of law.⁸⁶ In the United States, the First Amendment provides robust protections for free speech, with limited restrictions.⁸⁷

Laws limiting this freedom apply only to direct threats, incitement to violence, or defamation, and require high proof, especially for public figures. The US has a diverse and independent media, with a government that is responsive to criticism, ensuring free elections, an independent judiciary, and an active civil society. However, excessive freedom of speech can pose challenges. A 2022 poll by the New York Straight Times revealed that many Americans feel they do not genuinely enjoy free speech, particularly regarding racism. People of colour face greater challenges compared to white individuals.⁸⁸ The rise of social media has intensified this issue by rapidly spreading information and increasing public awareness of sensitive topics. For instance, there was widespread public support for a ceasefire in the recent conflict in the Middle East, specifically in Palestine. Students at Ivy League universities discovered their tuition fees indirectly funded Israeli military activities, sparking protests and boycotts against the institutions.⁸⁹

When students voiced their concerns to the Deans and participated in staged silent demonstrations, they faced harsh repercussions like suspension and expulsion. This crackdown on free speech drew global criticism, highlighting hypocrisy in a country known for championing freedom of expression while silencing dissent. The George Floyd incident in Minneapolis, Minnesota, that had been filed under *State v Chauvin and the Death of George Floyd (2021) 955 NW2d 684*, involved the brutal murder of Floyd by a white police officer during an arrest over a suspected counterfeit twenty-dollar bill.⁹⁰ This sparked widespread protests, many of which were peaceful and aimed at addressing issues like systemic racism and police brutality. However, protesters often faced harsh treatment from authorities, despite their non-disruptive approach. This pattern also resonated in protests within the film industry over pay disparities, where participants advocating for fair wages were similarly met with aggressive responses from those in power.

⁸⁶ Leslie Gielow Jacobs, "Freedom of Speech and Regulation of Fake News," *The American Journal of Comparative Law* 70, no. Supplement_1 (October 21, 2022): i278–311, <https://doi.org/10.1093/ajcl/avac010>.

⁸⁷ Giovanni De Gregorio and Catalina Goanta, "The Influencer Republic: Monetizing Political Speech on Social Media," *German Law Journal* 23, no. 2 (March 23, 2022): 204–25, <https://doi.org/10.1017/glj.2022.15>.

⁸⁸ James Piazza and Natalia Van Doren, "It's About Hate: Approval of Donald Trump, Racism, Xenophobia and Support for Political Violence," *American Politics Research* 51, no. 3 (May 8, 2023): 299–314, <https://doi.org/10.1177/1532673X221131561>.

⁸⁹ Erica Chenoweth et al., "Protests in the United States on Palestine and Israel, 2023–2024," *Social Movement Studies*, October 18, 2024, 1–14, <https://doi.org/10.1080/14742837.2024.2415674>.

⁹⁰ Sarah Zager, "Toggling: How Shifts between Deontology and Virtue Ethics Undermine Public Moral Discourse about Gender and Race," *Hypatia* 38, no. 2 (August 7, 2023): 294–315, <https://doi.org/10.1017/hyp.2023.25>.

Call for Reform

Freedom of expression has been well established to be a fundamental liberty for a human; however, as can be seen happening in the United States, a country with total freedom of expression with so few to no restrictions, drawing could lead to havoc within the society, as no law could legally detain them to keep a peaceful environment. This became evident during the general election between Donald Trump and Joe Biden, which raised many conflicts among their supporters.⁹¹

The Sedition Act 1948 could be said to have been drafted to align with Malaysia's tradition and culture, and the punishment itself could be considered just. The issue that needs to be reformed is how the government handles opinion and criticism, as problems arose the moment the government used the act to abuse the term 'seditious'. Reforming the government's use of sedition laws to suppress freedom of expression requires a multifaceted approach to ensure comprehensive and effective change.⁹² Activists widely denounced the former government's reliance on oppressive laws to intimidate, detain, and charge journalists, human rights advocates, and figures in the political opposition. This condemnation is rooted in recent inquiries and legal actions that suggest the current Perikatan Nasional administration might persist in leveraging the judicial system to stifle free expression nationwide.⁹³

In 2012, the Malaysian government announced its intention to review the Sedition Act, promising to eventually replace it with a new law that would better protect freedom of expression. However, despite these pledges, the law has remained in place. Civil society groups, human rights organisations, and political figures have repeatedly called for its reform or abolition, arguing that it stifles dissent and allows for political persecution.⁹⁴ One such call came from the Malaysian Bar, which has long advocated for the repeal of the Sedition Act, arguing that it is incompatible with democratic principles and international human rights standards.⁹⁵ Additionally, in November 2024, the Deputy Home Minister, Shamsul Anuar Nasarah, signalled a more cautious approach, suggesting the Act will be maintained for now following a study by the ministry.⁹⁶

⁹¹ Dalia M. Hamed, "Trump's January 6 Address: Hate Speech or Freedom of Speech? A Transdisciplinary Study," *Journal of Humanities and Applied Social Sciences* 4, no. 5 (October 31, 2022): 438–56, <https://doi.org/10.1108/JHASS-03-2021-0055>.

⁹² Asif Mohiuddin, "Women's Rights in Malaysia: Understanding Sociocultural and Legal Dynamics," in *Human Rights Law in Egypt and Malaysia: Minorities and Gender Equality* (Singapore: Springer Nature Singapore, 2024), 211–45, https://doi.org/10.1007/978-3-031-63867-1_5.

⁹³ Ihsan Yilmaz et al., "Religious Populism, Cyberspace and Digital Authoritarianism in Asia: India, Indonesia, Malaysia, Pakistan, and Turkey" (Brussels, January 27, 2022), <https://doi.org/10.55271/5jchdy>.

⁹⁴ Sebastian Dettman, "Authoritarian Innovations and Democratic Reform in the 'New Malaysia,'" *Democratization* 27, no. 6 (August 17, 2020): 1037–52, <https://doi.org/10.1080/13510347.2019.1705791>.

⁹⁵ Mohiuddin, "Democratic Discourse in Context: Malaysia's Approach to Freedom of Expression."

⁹⁶ New Strait Times (2024): Government has no plans to amend or repeal sedition act: <https://www.nst.com.my/news/nation/2024/11/1134289/govt-has-no-plans-amend-or-repeal-sedition-act>

Drafting new legislation is crucial to precisely defining sedition and preventing overly broad interpretations that could stifle legitimate expression. This process should align these laws with international human rights standards, such as those in Article 19 of the International Covenant on Civil and Political Rights (ICCPR), although Malaysia has not yet ratified it.⁹⁷

Involving legal experts ensures that the new legislation is strong, effective, and resistant to misuse. Political engagement is essential to include lobbying supportive politicians to advocate for legislative reform that protects free speech. Building coalitions with civil society organisations, human rights groups, and other stakeholders strengthens the collective voice calling for change. This unified approach increases pressure on the government and enhances the prospects for meaningful legislative reform.⁹⁸ Raising public awareness is key to gaining support, as educating people on the importance of free speech and the risks associated with vague sedition laws can change public opinion. Utilising social media, public forums, and partnerships with independent media can effectively highlight cases of sedition law misuse.⁹⁹

Strategic legal challenges can question the constitutionality of these laws in court, potentially limiting their use. They also provide legal aid to those charged, ensure fair trials, and create opportunities to set legal precedents, thereby effectively challenging misuse. Involving international human rights organisations such as Amnesty International and Human Rights Watch can draw global attention to the issue. These organisations can pressure the Malaysian government through reports, campaigns, and advocacy efforts. They also encourage foreign governments to raise the issue in diplomatic discussions, adding additional pressure and leveraging international relationships to push for reform.¹⁰⁰ Empowering local communities to demand change through peaceful protests, petitions, and community meetings demonstrates widespread public support for reform. This support can aid in the smoothness of the reform process, keep the issue prominent in public discourse, and maintain pressure on the government to address concerns effectively.

Ensuring transparency and accountability involves establishing independent bodies to oversee the use of sedition laws and report any instances of abuse. Making these findings public can hold authorities accountable and discourage misuse. Advocating for freedom of information and more transparent government decision-

⁹⁷ Adam Abdelhameed, “Cultural Values as a Gatekeeper in Malaysia’s Human Rights Policy: Advocating for Inclusive International Instruments,” *Journal of Politics and Law* 18, no. 4 (September 16, 2025): 36, <https://doi.org/10.5539/jpl.v18n4p36>.

⁹⁸ Michelle I. Gawerc, “Coalition-building and the Forging of Solidarity Across Difference and Inequality,” *Sociology Compass* 15, no. 3 (March 24, 2021), <https://doi.org/10.1111/soc4.12858>.

⁹⁹ Azizuddin Mohd Sani Mohd and Dian Diana Abdul Hamed Shah, “Freedom of Religious Expression in Malaysia,” *Journal of International Studies* 7 (2011): 33–49, <http://jis.uum.edu.my>.

¹⁰⁰ Zokhri Idris, “Positioning Malaysia in The Realm of Global Uncertainty: Analysing Its Concern and Struggles of Pakatan Harapan Government,” *Journal of International Studies* 16 (2020): 159–82, <https://e-journal.uum.edu.my/index.php/jis/article/view/jis2020.16.10/2767>.

making processes can also reduce unjust applications of the law. Promoting a culture of open debate and tolerance is crucial for lasting change. Public campaigns and educational programs can foster an environment where diverse opinions are respected and discussed constructively. Learning from successful reforms in other countries can offer models and motivation for similar changes in Malaysia, demonstrating that reform is both achievable and beneficial.

Thus, integrating these strategies creates a comprehensive approach to reforming sedition laws and safeguarding freedom of expression in Malaysia. Each strategy reinforces the others, forming a cohesive effort that addresses the issue from multiple angles.

Conclusion

Freedom of speech and expression in Malaysia remains a constitutional right in theory, but is heavily constrained in practice. The main issues that limit this freedom stem from outdated and overly broad laws such as the Sedition Act 1948, the Communications and Multimedia Act 1998, and the Printing Presses and Publications Act 1984, which grant excessive discretion to authorities. Vague legal definitions, coupled with the selective enforcement of the controversial “3R” policy (Race, Religion, Royalty), create uncertainty, encourage self-censorship, and enable abuse of power. Moreover, digital platforms, while opening new spaces for discourse, are also subject to close state monitoring, further restricting open political debate.

To address these challenges, meaningful regulatory improvements are necessary. Malaysia should review and amend or repeal draconian provisions within existing statutes to ensure they are narrowly tailored and compliant with international human rights standards. More explicit legal definitions are needed to prevent arbitrary enforcement, while independent judicial oversight must be strengthened to safeguard against political misuse. Additionally, regulatory frameworks should strike a balance between legitimate concerns over national security and the protection of democratic freedoms, ensuring that online discourse is not excessively policed. Public awareness, media literacy, and institutional transparency should also be promoted to build a culture of open dialogue. In essence, safeguarding freedom of expression in Malaysia requires a comprehensive approach that combines legal reform, judicial accountability, and social education. By narrowing vague restrictions, aligning domestic laws with global norms, and fostering a culture of transparency, Malaysia can protect democratic values while maintaining societal stability.

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