

The Rights and Duties of Journalists in a Constitutional Democracy: An Analytical Exposition

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Abstract: Journalists, being the watchdog of the society, seem indispensable in a constitutional democracy. Yet, collision course between the journalists and the law enforcement agents appears unavoidable. Sometimes, journalists allege violence and intimidation on the part of the law enforcement agents. The law enforcement agents also allege that the journalists do not keep within their limits. In a constitutional democracy, certain rights and duties are expected of the journalists. This paper therefore analyses the rights and duties of journalists in this regard. To achieve this, it uses a number of international human rights instruments; constitutional provisions and case laws to make the legal analysis. It further discusses the independence of journalists and the protection of journalistic sources in a constitutional democracy. It finds that these rights are not adequately appreciated by many stakeholders and that the duties are sometimes neglected even by the journalists themselves. It further finds that these rights (together with its limitations) and duties are necessary in a constitutional democracy. Although the paper benefits countries practicing constitutional democracy, the focus is more on Malaysia.

Key words: Rights and duties of journalists, constitutional democracy

INTRODUCTION

The role of journalists in any democratic society is not only of high significance, but it is essential for a healthy democracy. Yet, cases of journalists' brutality or assault by the law enforcement agents are reported. For instance, as recent as 9 July 2011, reporters on duty at public rallies were allegedly attacked and injured. The Human Rights Commission (Suhakam) conducted inquiry into a rally in Kuala Lumpur calling for clean and fair election (known as BERSIH 2.0 rally) where the journalists Union leaders complained that some of its members were injured by the police. The National Union of Journalists (NUJ) Malaysia secretary-general Anbalagan Veerasamy during the session of the inquiry noted that the policemen should not have caused physical injuries to journalists. As a result, many statements are being issued by body of journalists to condemn the intimidation and violence against journalists in Malaysia.

One of the causes of the above problem is the lack of appreciation of the rights and duties of journalists in a constitutional democracy like that of Malaysia. This is not only on the part of the law enforcement agents; some journalists also have their share of responsibility for not knowing their duties and staying by their boundaries. To solve this problem, there have been some international instruments declaring the rights and duties of journalists in a constitutional democracy. For instance, Declaration of Duties and Rights of Journalists adopted by the Swiss Press Council Foundation in December 1999 declares the right of journalists as: "a) free access to all sources of information and the right to investigate without impediment anything that is in the public interest. Public or private confidentiality can only be invoked against the journalist in exceptional circumstances and with the provision of clearly-defined reasons; b) the right not to act in any way nor express any opinion that is contrary to professional rules or personal conscience. As a result, journalists should not suffer any prejudice; c) the right to refuse any directive or interference that is contrary to the general policy of the organisation with which he or she is collaborating. This policy must be communicated in writing before the journalist's employment. It cannot be modified or revoked unilaterally under pain of breach of contract; d) the right to transparency as to the ownership of the company for which the journalist works, the right of a member of an editorial team to be informed in time, and to be heard before, any decision that affects the future of the company. In particular, members of the editorial staff must be informed and heard before final decisions determining the composition or organisation of the editorial department; e) the right to adequate and continuous professional training; f) the right to benefit from work conditions guaranteed by a collective agreement, including the right to be active in professional organisations without suffering discrimination; and g) the right to benefit from an individual employment contract guaranteeing material and moral security. In particular, an

appropriate remuneration - corresponding to the journalist's function, responsibilities and social role - should ensure his or her economic independence.”

In the same vein, the duties of journalists as stated in the declaration are: “1) to seek out the truth, in the interests of the public's right to know, whatever the consequences to him- or herself; 2) to defend freedom of information, freedom of commentary and criticism, and the independence and dignity of the journalistic profession; 3) not to publish information, documents, images or sound recordings of which the origin is unknown to the journalist. Not to suppress information or any essential elements of a story. Not to misrepresent any text, document, image or sound recording, nor people's expressed opinions. If information is unconfirmed to clearly say so. To indicate when photographic and/or sound material has been combined to make a montage; 4) not to use dishonest methods to obtain information, recordings, images or documents. Not to manipulate them, or have them manipulated by a third party with a view to falsification. To prohibit plagiarism in not passing off the work or ideas of others as one's own; 5) to rectify any published information that is revealed to be factually incorrect; 6) to respect professional secrecy and not reveal the source of any information obtained in confidence; 7) to respect peoples' privacy insofar as the public interest does not demand otherwise. To disregard anonymous or unfounded accusations; 8) in respecting human dignity, the journalist must avoid any allusion by text, image or sound to a person's ethnic or national origin, religion, gender, sexual orientation as well as to any illness or physical or mental handicap that could be discriminatory in character. The reporting of war, acts of terrorism, accidents and catastrophes by means of text, image and sound should respect the victims' suffering and the feelings of their loved ones; 9) not to accept any advantage nor any promise that could limit his or her professional independence or expression of opinion; 10) to avoid as journalists any form of commercial advertising; and never to accept conditions laid down by advertisers directly or indirectly; 11) to take journalistic directives only from designated editorial superiors; and to respect those directives only when they are not contrary to this Declaration.”

Against the above backdrop, this paper analyses the rights and duties of journalists in a constitutional democracy. The first part analyses the rights of journalists. The second part analyses the duties of journalists. The third part analyses the independence of journalists. The fourth part analyses the protection of journalistic sources of information while the last part concludes the paper with some suggestions. Although the paper is of general application to countries practicing constitutional democracy, the focus of the paper is on Malaysia.

Rights of Journalists:

As a member state of the United Nations, Malaysia give due respects to international legal instruments such as the United Nations Universal Declaration of Human Rights. This instrument protects freedom of expression and information as can be seen in terms of the right to collect, form, hold, and report opinions (Article 15); free and equal, access to information within and outside state boundaries (Article 16); freedom of speech and expression, equal access to all channels of communication. It includes the obligation to present news broadcast and information moderately and fairly (Article 18); and the right to freedom of expression and opinion, including “freedom to hold opinions without interference and to seek, receive and impart information by any media, notwithstanding the border” (Article 19).

It is noteworthy that these rights are set up to create a broad legal framework for the operation of media groups and other civil society bodies. The circumstances under which these rights can be curtailed by the government are stated in Article 29 of the Universal Declaration that aims at ensuring respect for the rights and repute of others; protecting national security, public order (the situation needed to keep a state governable), public health, public morality, and discourage inequity, aggression and enmity.

Furthermore, these rights practically apply in democratic dispensation. Access to information is essential for the continued existence of any democratic system as it permits general public to check the government dealings and decisions. This will guarantee that the interest of the community is served and proper decisions concerning the wellbeing and safety of the majority of the citizens. This right is most vital during elections, the major period when citizens hold their representatives responsible for their dealings while in office. This will make them elect the best contestant who can best stand for them. This shows that the media is a platform through which contestants' credentials and manifestos are measured by the electorates. This needs to be available to all parties and devoid of political abuse.

There are now significant numbers of journalists reporting during the periods of riots or demonstration. This is one of the most challenging tasks for a journalist taking into account the dangers it involves. The question therefore is whether journalists have rights to be at the scene of riots and whether they can be driven away by the police. The police no doubt have enormous powers under the law. However, the importance of their work should be balance with the possibility of obstructing law enforcement agents from performing their duties. With the coming into force the Peaceful Assembly Act 2012 in April 2012, one would expect that adequate attention is given to the right to assemble and to record and report such assembly by journalists.

A careful perusal of the Police Act of Malaysia (Act 344) reveals that there is no express provision which empowers the police to seize the properties, intimidate or cause violence on journalists. The general powers and

duties of the police are contained under Section 20 of the Police Act. By section 20(3) (a), Police may take lawful measures to do lawful acts as may be necessary to 'apprehend all persons whom by law authorised to apprehend'. It is submitted here that except a journalist commits an offence that is known to law, he does not fall under the category of persons whom the police is by law authorised to apprehend. Again, by section 21 (3), any person who obstructs, opposes or disobeys any reasonable direction of the police in performance of his duty commits an offence. It can be said here that where a journalist performs his duty in accordance with the law by mere covering the event, this does not mean obstruction. However, the journalists need to obey lawful and reasonable orders given by the police. Otherwise, this may be seen as an offence, which could justify an arrest. Also, section 27(1)-(8) empowers the police regulate assemblies, meetings, and procession. A careful study of these provisions does not give the police the power to seize properties, intimidate or cause violence on journalists. However, by section 27B, if persons are ordered to disperse and do not comply in line with this section, the police may use force necessary to disperse them. Again, although the word persons are used, it can be said in the authors' view that 'persons' refer to rioters or demonstrators and not journalists; although the Act does not define the word persons in this regard.

The Malaysian Federal Constitution also guarantees the freedom of speech and expression (Article 10(1) (a)). However, the Parliament has the power to restrict this right as it deems expedient in the interest of security of the federation or any parts of it, friendly relations with other countries, public order or morality (Article 10(2) (a)). It may also be restricted in order to protect the privileges of Parliament or of the legislative Assemblies (Article 10(2) (a)). It may also provide against contempt of court, defamation, or incitement to any offence (Article 10(2) (a)).

Thus, the Constitution guarantees a free press which includes all news media such as television, radio and online media. Free press connotes that the news media are not subject to control by the government except as allowed by the Constitution. In other words, the government does not have free rein to control or obstruct items from being published by the press.

This is the reason why many have advocated for a Right to Information (RTI) legislation. This is necessary in order to exercise checks and balances thereby keeping government free from practices that are not people oriented and to make government accountable to the people. It also gives level playing ground for businesses, abolishing the culture of cronyism and nepotism.

It is against this backdrop that the Centre for Independent Journalism (CIJ) urges Prime Minister Najib Razak to introduce RTI legislation at the federal level to replace the Official Secrets Act as the next step in his democratisation promise as announced in his anniversary of Malaysia Day speech (Hamzah, 2012). It noted that is high time that the culture of secrecy at the Federal and state levels is replaced with a culture of openness. This will cater for growing public demands for transparency and accountability at all levels of governance. However, Penang and Selangor States have come up with enactments on freedom of information. These laws allow to some extent access to public information. The objectives of the law in both states are to provide for and enhance disclosure of information of public interest and giving access to information made by every department of the State Government and to promote transparency and accountability for each department in the State Government (Long title of Penang Freedom of Information Enactment, 2010; Long title of Selangor Freedom of Information Enactment, 2011).

Duties of Journalists:

Journalists have created some core ideology so that the job can be done effectively. These principles, which underline the theory of journalism, will allow the media to serve as a true watchdog of the community. One important duty of Journalists is the duty to speak the truth at all times. In fact, it is an offence to maliciously publish any false news. The printer, publisher, editor and the writer of will be guilty of an offence under section 8A of the Printing Presses and Publications Act 1984, Act 301. The relative successes of any democratic regime are dependent on the reliability, accuracy of facts put to them by journalists in a right context. This must not only be theoretical but must also be practical. This process starts with the professional discipline while collecting and verifying information. Journalists should endeavor to express a just and dependable explanation of their words, valid for now, subject to further investigation. They should be as transparent as much as possible about sources and styles so that readers make personal assessment of the information. Accuracy is the underpinning upon which other things are built in terms of interpretation, context, comment, criticism, debate and analysis. This is where the truth emerges. The greater flow of data will ensure accuracy of information and putting it in perspective.

Another important duty of journalists is the loyalty first to citizens. The media group is answerable to a number of constituencies such as shareholders and advertisers. This should not stop them from having commitment to the citizens and the public at large. The primary basis a media organization's credibility is the indirect agreement with the audience that their coverage is not biased for associates or advertisers. The journalists have obligation to uphold loyalty to citizens and the larger public interest above any other. This will ensure that they give information without fear or favour. Journalism should represent all citizen or groups in

society. Where a citizen is ignored, it may lead to disenfranchisement. Modern media requires credibility, which builds a wide and faithful audience, which may translate into financial benefits. Thus, those with business interest in the media should nurture and not make use of their loyalty to the audience ahead of other concerns.

The essence of journalism is a discipline of authentication. Journalists have a duty to act as professionals and verify information. With the development of the concept of objectivity, it did not entail that journalists are devoid of bias. It connotes, to a certain extent, a reliable process of verifying information. It has a role to develop a transparent method of testing evidence. This will avert individual and cultural biases that could undermine the accuracy of their information. The method and the journalist should be objective.

Protection of Journalistic Sources:

Freedom of press is dependent on the free dissemination of information from the media to the public and from the public to the media. Those who are not journalists have a role to play in the free flow of information in the world. Journalists in the world depend on members of the public for their sources of news and information. This is because they supply information on issues of public concern. Sources or whistleblowers rely on the reporter to disseminate the information to the public, which will open public debate on the issues. In various instances, anonymity is the prerequisite upon which the information is transmitted from the source to the journalist. This may be provoked by fear of repercussions, which might negatively have an effect on their physical safety or job security. In view of this, journalists have long advocated for the right to refuse to reveal the names of their sources and the type of the information given to them in confidence. Journalists opined that in the absence of ways to guard their secret sources, their capacity, for instance, to expose corrupt public officials might be critically undermined. Thus, there is a dire need to guard their sources. Journalists' code of ethics does not allow such disclosure. This has been relied upon in courts of law when they are ordered by courts to disclose the personality of their sources. Despite the clear merit of making sure that journalists guard the anonymity of their sources, circumstances may occur where dominant interests and rights of other people conflict with the interests of journalists. The conflicts in most cases could relate to the administration of justice. This is common where information is crucial to civil or criminal actions. This section of the paper examines the extent to which journalists have a special privilege to refuse to disclose the identity of confidential sources in Malaysia. It first examines the position under common law, Malaysia also being of common law jurisdictions.

There is a privilege not to reveal the personality of sources when it is discovered in a libel action. This is otherwise known as the 'newspaper rule'. This has been accepted by courts in some jurisdictions but rejected in other jurisdictions. For instance, the court decision in *Reid v Telegram Publishing Co.* 28 DLR (2d) 6 (HC), p. 10 obviously held that courts had a discretionary power, taking into consideration on all the circumstances, to reject a request for disclosure of sources during discovery. This is notwithstanding the relevancy of the evidence before the court. However, in *White v MacLean Hunter Ltd.* (1990) Ontario Court of Justice, No. 32666/88, the court ordered disclosure in respect of a highly offensive and admittedly untrue statement by the defendant about the plaintiff who was a senior member of the Prime Minister's staff. Furthermore, the newspaper rule was entirely rejected in some provinces for instance in the British Columbia Court of Appeal, which held that the libel discovery rules in that province, were not consistent with such a privilege (*Wismer v MacLean-Hunter Publishing Co. (No. 2)* [1954] 1 DLR 501).

In *Slavutych v Baker* [1976] 1 SCR 254 (SC), p. 260, the Supreme Court of Canada (SCC) held that courts might recognise a qualified privilege not to testify where four criteria were satisfied: a) The communication must begin in a confidence of non-disclosure; b) This confidentiality must be crucial to the ongoing relationship between the parties; c) The relationship must be one which ought to be fostered; and d) The injury to the relationship from disclosure must be greater than the benefit it would take to the litigation. These criteria apply to all confidential relationships. This might be of assistance to journalists who want to guard the identity of their sources. The bond between confidential sources and journalists would in general satisfy the first three circumstances but compliance with the fourth would clearly depend on the situations of the case. In a later case of *Moyse v. Alberta* [1989] 1 SCR 1572 (SC) (Labour Relations Board), the court held that the appellant, a journalist, did not come within the *Slavutych case* criteria in respect of her claim of a privilege not to give evidence concerning information she had given to certain persons. In *Crown Trust Co. v. Rosenberg* (1983) 38 CPC 109 (Ont. HCJ), pp. 117-8, Saunders J. refused to compel a journalist to reveal the personality of a source, which needs only disclosure of the substance of the communication. This was based on the public interest in preserving the secrecy of sources and the fact that it might obtain the information in other sources.

In United Kingdom, English law offers statutory protection to writers who do not wish to divulge confidential sources. Section 10 of the Contempt of Court Act 1981 provides that '[n]o court may require a person to disclose, nor is the person guilty of contempt of court for refusing to disclose the source information contained in the publication for which he is responsible, unless it is established to the satisfaction of the court that disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime'. Three points may be noted. First, the Court must determine whether disclosure is sought for one of the four specified grounds. An order to disclose for other reasons, for example, to protect public health, is not

allowed. Second, the Court must determine whether the information is really 'necessary'. Proof that revelation is merely 'convenient' or 'expedient' is insufficient. The name must be 'really needed' (Robertson, et al., 1990). The Court must weigh the importance of the specified ground against the "journalist's undertaking of confidence" (Article 19, Press Law and Practice (London, 1993), p. 187; Robertson, et al., 1990). Third, the court retains discretion to refuse to order disclosure even when the conditions for an exception are met (Article 19, Press Law and Practice (London, 1993), p. 187; Robertson, et al., 1990). Prior to the European Court of Human Rights (ECHR) decision in *Goodwin*, this provision had been interpreted broadly by the UK courts, which frequently ordered disclosure (Article 19, Press Law and Practice, *ibid*). Since that judgment, English courts have again had the opportunity to examine the question of the protection of journalists' sources. *Camelot v Centaur Communications* (Unreported) involved very similar facts to *Goodwin*. A journalist received a copy of the financial accounts of the plaintiff company from a confidential source and published an article based on that information some six days before the plaintiff was due to release it themselves. The plaintiff obtained an order restraining the defendant from using the accounts in question and from publishing or distributing the confidential information. The defendant was also ordered to deliver the accounts to the plaintiff as this was expected to identify the source of the leak that was suspected of operating at a high level. On appeal, the plaintiff argued that the existence of a person prepared to leak confidential information operating at such a high level was damaging to the company. The Court of Appeal, upholding the disclosure order, referred in some detail to both the ECHR and House of Lords judgments in *Goodwin* (The House of Lords decision was *X. Ltd v. Morgan Grampian (Publishers) Ltd.* [1991] 1 AC 1). The Court of Appeal distinguished the facts in *Camelot v. Centaur*, from those of *Goodwin*, holding that while in the latter the courts were concerned with further disclosure of the same.

In Australia, there appears to be no constitutional or statutory framework for the protection journalists' sources. This is largely governed by the common law with judicial decisions. Immunity or privilege for journalists also lacks protection. However, some measure of protection is available for journalist's sources. This can be found in some provisions in the law of evidence (See for example *DPP v. Luders*, Commonwealth Law Bulletin April 1993 at 604, (unreported) District Court of Western Australia, No. 177 of 1990 and Independent Corruption Commission Against *Corruption v. Cornwall*, (1993) 116 ALR 97 (Supreme Court of New South Wales), paras. 35-40). Also, courts in Australia have adopted position of the English Court of Appeal in *Attorney-General v Mulholland* [1963] 2 QB 477 (CA) in accommodating that the public interest in the protection of sources may exclude even relevant or necessary evidence. This will occur in situations where the courts concluded that there are chances of disclosure may cause harm or result into miscarriage of justice when compared with the harm of compelling or punishing a refusal to answer" (See, for example, *McGuinness, Nicolls v Director of Public Prosecutions* [1993] 61 SASR 31 (FC, South Australia Supreme Court)). In *John Fairfax & Sons v Cojuango* (1988) 165 CLR 347 (High Court of Australia), the High Court of Australia refused to request for disclosure of sources, unless the interests of justice so demands. There is a further protection by a limited application of the "newspaper rule". This permits journalists to refuse to reveal their sources at the interlocutory stage in an action for defamation unless justice of the case so requires between the parties to the dispute (*John Fairfax v Cojuango*, *ibid*. p. 354). However, the newspaper rule has been narrowly interpreted in a case relating to protection of sources (*ibid*). In some states, courts could make a preliminary or interlocutory order to a third-party to reveal information or documents. This is after the plaintiff has made rational ineffective inquiries and where it appears that the third party has relevant information regarding the identity of a possible defendant (See, for instance, Rule 32.03 of the Supreme Court of Victoria). Thus, the court in a case where disclosure of a journalist's source was sought held that the applicant must demonstrate that an order to compel disclosure is essential to give him remedy that is effective (*The Herald & Weekly Times Limited & Others v. The Guide Dog Owners and Friends Assoc. & Another* (Victoria), Commonwealth Law Bulletin 91/102, (1990) VR 451).

In Singapore, however, courts have in particular rejected the Newspaper Rule, holding that even though it was generally adopted in common law, it was not the legal position in Singapore (*Tullett Prebon (Singapore) Ltd and Others v Spring Mark Geoffrey and Another* [2007] SGHC 71). A court opined that its recognition would encourage the unseen character assassin and other mischief makers (*KLW Holdings v Singapore Press* [2002] 4 SLR 417).

Malaysian Position:

It can be stated from the outset that Malaysian Federal Constitution does not offer express protection for journalists' sources. However, a limited protection exists under the Official Secrets Act (Official Secrets Act, Act 88, Laws of Malaysia, 1972). Thus, its provisions by necessary implication could be extended to matters relating to protection of journalists' sources. This is because section 24 (1) of the Act precludes a situation where a witness is obliged or permitted to disclose the source of his information or state any matter, which may lead to his discovery. It provides:

(1) Except as hereinafter provided, no complaint as to an offence under this Act shall be admitted in evidence in any civil or criminal proceedings whatsoever, and no witness shall be obliged or permitted to disclose the name or address of any informer, or state any matter which might lead to his discovery.

(2) If any documents which are in evidence or liable to inspection in any civil or criminal proceedings whatsoever contain any entry *Official Secrets* in which any informer is named or described or which might lead to his discovery, the court before which the proceeding is had shall cause all such passages to be concealed from view or to be obliterated so far as is necessary to protect the informer from discovery, but no further.

(3) If in any proceeding relating to any offence under this Act or any prescribed offence the court, after full inquiry into the case, is of the opinion that the informer wilfully made in his complaint a material statement which he knew or believed to be false or did not believe to be true, or is of the opinion that justice cannot be fully done between the parties thereto without the discovery of the informer, the court may require the production of the original complaint, if in writing, and permit inquiry and require full disclosure concerning the informer.

However, this Act contains a number of restrictions, which could even overwhelm the general rule. The exceptions limit the privilege of persons including journalists in the protection of their sources. This will be examined.

First, the Act creates a duty on everybody including the journalists to give information to appropriate authority regarding the commission of an offence or suspected offence under the Act. For instance, section 11 (1) of the Official Secrets Act provides that: If any person who has any information relating to an offence or suspected offence under this Act fails - (a) to give, on demand, such information; or (b) to attend at such reasonable time and place to give such information, *Official Secrets* when required to do so by - (aa) any police officer above the rank of Inspector; (bb) any member of the armed forces employed on guard, sentry, patrol or other similar duty; or (cc) any public officer authorized by the Minister, he shall be guilty of an offence punishable with imprisonment for a term not less than one year but not exceeding seven years. Also, non-disclosure under the Act is also criminalized. Thus, a journalist may risk being sent to jail in this circumstance for instance if he fails to disclose the fact that an offence is about to be committed and the person (who may be his source) who seeks to commit such offence.

Also, a person, including a journalist may be compelled under the Act to produce certain information by way of messages or other documents in his possession. In this regard, section 12 of Official Secrets Act provides: "(1) Where it appears to the Minister that such a course is expedient, he may by warrant under his hand, require any person who owns or controls any telecommunications, used for sending or receipt of messages to or from any place out of Malaysia, to produce to him or to any person named in the warrant, the originals and transcripts of any message sent from or addressed to any specified persons or place, sent to or received from any place out of Malaysia by means of such telecommunication and all other papers relating to such message. (2) If any person, on being required to produce such original or transcript or paper, refuses or neglects to do so or mutilates or destroys the same, he shall be guilty of an offence punishable with imprisonment for a term not less than one year but not exceeding seven years." This is notwithstanding how he came about it whether from his source or otherwise. This could lead to disclosure of his source of information. Where he decides not to disclose this, it is regarded as a criminal offence and such journalists may risk a term of imprisonment.

Furthermore, a Magistrate has the power to issue warrant for the purpose of searching and seizing evidence or information under the Act. In this regard, section 19 of Official Secrets Act provides: "(1) Whenever it appears to any Magistrate upon information and after such inquiry as he thinks necessary that there is reasonable cause to believe that in any place there is any evidence of the commission of an offence under this Act, he may, by warrant directed to any police officer empower such officer to enter such place, by force if necessary, and there to search for, seize and detain any such evidence. (2) Whenever it appears to any police officer not below the rank of Inspector that there is reasonable cause to believe that in any place there is concealed or deposited any evidence of the commission of an offence under this Act, or of any prescribed offence, and such police officer has reasonable grounds for believing that by reason of the delay in obtaining a search warrant the object of the search is likely to be frustrated, he may exercise in and in respect of such place all the powers mentioned in subsection (1) in as full and ample a measure as if he were empowered to do so by warrant issued under such subsection." This is notwithstanding the fact the person including a journalist came about such information or evidence by virtue of his professional capacity.

Thus, a journalist having the nature of this information or evidence under this Act may have his house or media company or wherever place search and such evidence recovered where he fails to make such disclosure. This is in addition to the special powers of the court to direct the search and seizure of any vital document, which may also reveal the source of the journalist's information. Section 6 provides: (1) If any court is satisfied that there is reasonable cause to believe that a document contains matter or information prejudicial to the safety or interests of Malaysia and directly or indirectly useful to a foreign power or to an enemy, the court may issue a search warrant to search for and seize such document even though an offence under this Act is not alleged to have been committed.

(2) Where a document required to be seized under a search warrant issued under subsection (1) is so seized or is voluntarily produced by the person in whose possession it is, it shall be sent by the court to the competent authority which may, if it considers that the document contains matter or information prejudicial to the safety or interests of Malaysia and directly or indirectly useful to a foreign power or to an enemy, order the document to be forfeited, or order that any part of such document be obliterated, erased or removed.

Thus, the law enforcement agencies could seek protection under these provisions to raid any media house for the purpose of discovering certain source of information. For instance, in 2003, Malaysian police raided the offices of online newspaper *malaysiakini* and seized 19 computers after the newspaper published an anonymous letter critical of the ruling party and refused to identify the author (Banisar, 2007).

It needs to be said however that since there are no express constitutional and statutory provisions adequately protecting the journalist sources, the courts can apply English common law and equity in situations where justice of the case so demands that the sources of journalist be protected. See 3(1) of the Civil Law Act, 1956 which empowers Malaysian courts to apply English Common Law and Equity when there is no statutory provision governing an issue before the court (*Sockalingam Chettiar v Chan Moi* [1947] MLJ 154; *PP v Oie Hee Koi* [1968] 1 MLJ 148; *Village Holdings Sdn Bhd v Her Majesty the Queen in Right of Canada* [1988] 2 MLJ; *Common Wealth of Australia v Midford (Malaysia) Sdn Bhd* [1990] 1 CLJ 878). This is more so that there appears to be paucity of judicial authorities in this area from the Malaysian perspective.

Conclusion:

From the foregoing discussion, journalists have enormous rights and corresponding duties in any state practicing constitutional democracy. Law enforcement agents do not adequately appreciate the rights. This is partly due to the fact that the corresponding duties are not observed properly even on the parts of some journalists. This has brought them into collision course with the law enforcements agents. Everybody must be ready and willing to uphold the dictate of the rule of law in a constitutional democracy.

Again, the rights of journalists as guaranteed in a number of international legal instruments flow from the freedom of expression, opinion and free press. This includes the right to collect, form, hold, and report opinions, the right to free and equal access to information within and outside state boundaries; freedom of speech and expression, right to free and equal access to all channels of communication. It includes the obligation to present news broadcast and information moderately and fairly; and the freedom to hold opinions without interference and to seek, receive and impart information by any media, notwithstanding the border. However, these rights can be abridged or curtailed in order to ensure respect for the rights and repute of others i.e. anti-defamation; protecting national security, public order (the situation needed to keep a state governable), public health; public morality; and to avoiding encouragement to inequity, aggression and enmity. These rights have however come with corresponding duties. These include the duty to speak the truth at all times; be loyal to the populace; ensure discipline; serve as watch-dog of the society and act as professionals to mention but a few.

However, for the journalists to be able to assert their rights and comply with their duties, a measure of independence is required. It is also important that they have a measure of protection for their journalistic sources. This is otherwise known as the common law tradition of newspaper rule. This has been accepted by some quarters and rejected by others. For instance, Canadian Supreme Court allowed the rule under strict conditions stated above. Similarly, UK law does not permit disclosure of journalistic sources except for national security and prevention of crime or disorder. However, courts in Singapore have rejected the newspaper rule. Journalistic sources are also protected in Malaysia subject to numerous exceptions provided under the Official Secrets Act. In all, there is the need to sensitise the stakeholders on the rights and duties of journalists together with their limitations. The enforcement agents also need some re-orientations in form of seminars, conferences and workshops. This will benefit the society immensely in a constitutional democracy.

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