

'Selective prosecution fuels repeal of Sedition Act'

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COMMENT De facto law minister Nancy Shukri's statement as to why a particular individual was not charged for advocating the burning of the Bible makes it even more urgent to expedite the repeal of the Sedition Act.

The minister says that the intention of the person was not to cause chaos but to defend his religion.

This statement seems to validate inflammatory statements made in defence of one's religion – a rather dangerous statement in a multi-religious society such as ours.

Is this not the same justification of the Islamic State in Syria for its beheading actions?

Significantly, Nancy's statement suggests that intention is a key element in establishing the offence.

This flies in the face of the provisions of the Act - which explicitly makes intention irrelevant to establish seditious tendency.

More particularly, Section 3(3) of the Act states that the intention of the person charged is "deemed to be irrelevant" if the words have a seditious tendency.

All that the prosecution needs to prove is no more than that the words were spoken.

Courts have had no choice but to consistently rule that intention is irrelevant, given the draconian cast of the provisions.

Dissent a hallmark of democracy

The courts have also held that there is no need to link the words with actual violence or adverse reaction.

"Seditious tendency" is expressed in such wide and vacuous terms as to capture any act of dissent.

For example, a tendency to raise discontent or disaffection among the inhabitants of Malaysia amounts to a "seditious tendency".

Surely, expressing discontent or disaffection is a hallmark of a healthy, functioning democracy.

Some leeway is indeed allowed for questioning government policy or misjudgment of rulers; but again' this is looped back to the proviso that the critique must not have a seditious tendency!

So, on the question of exonerating the “burn Bibles” speaker on the ground of his intention, either the minister is ill-advised on the existing law, or the attorney-general's (AG) discretion not to charge has been exercised, with respect, in disregard of the existing law and court decisions.

Is it political or legal?

More disturbingly, it shows that the law can be interpreted in any which way and reinforces the disquiet among the public as to the basis on which Attorney-General Abdul Gani Patail is making his decisions.

Some are not charged because it is suggested that “they did not intend to cause chaos”; others are charged even though it is clear that they intended no chaos; nor did any chaos ensue.

Such exercise of prosecutorial function has been categorised as “persecution” by a former AG; and “abuse through selective prosecution” by a former minister who is now a senior member of the National Unity Consultative Council, which has formulated a bill to replace the Act.

Take yet another recent loud public cry for vernacular schools to be abolished.

The call has become more strident in repetition. To date, no action has been taken. Nor indeed threatened.

The call, though couched as promoting national unity, in fact questions the existence of the right to sustain the use and study of the vernacular languages as guaranteed by Article 152 of the Federal Constitution.

This implies that the AG accepts that this conduct does not amount to a seditious tendency.

Yet our courts, in a landmark case, jailed an MP for asking in Parliament the amendment of Article 152 of the Federal Constitution to pave the way for the closure of vernacular schools and the restriction on the use of such languages in road signs.

Tainting the judiciary

Many view the abolition call as similarly challenging the existence of the right guaranteed by the constitution.

The AG needs to explain why this does not amount to a “seditious tendency”, for his silence is fuelling the “selective prosecution” theory making its rounds in public discourse.

The prosecution of a select few also places our courts and judges in an invidious position.

How would members of the public view decisions made by our courts in respect of some acts and not others?

This could well – needlessly and unjustifiably – taint the justice system itself and ultimately bruise the rule of law.

For these varied reasons, many in the legal fraternity advocate the repeal of this inherently unjust colonial vestige. The late highly respected Justice Azmi Kamaruddin judicially acknowledged: "The law of sedition in this country is difficult to understand due to its artificial nature..."

A fresh law was indeed promised to replace this Act and, reportedly, is in the pipeline. Barely 24 months ago, the prime minister promised: "The new Act will be more specific and allow us to act against those who use sensitive issues to undermine national unity."

All that remains is for follow-up action to end once and for all the scourge of these endless sedition prosecutions – which perhaps, more than anything else, seem to be promoting disharmony and discord in our beloved country.