

Freedom of Dissociation as an Integral Element of Fundamental Liberties: A Critical Discussion

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ABSTRACT

Freedom of dissociation is commonly misconstrued as not related to the freedom of association. Freedom of association is one of the crucial components of fundamental liberties provided together with the freedom of speech and assembly in our Federal Constitution. The purpose of this study is to demonstrate the freedom of dissociation is part of the interpretation of the freedom of association under Article 10(1)(c) of the Federal Constitution. A number of methods are used in this research such as literal interpretation by reference to dictionaries and articles; a comparative study between the Federal Constitution of Malaysia and other foreign documents; and an analysis of landmark cases. As a result, it was found to be included as one of the fundamental liberties safeguarded by the Federal Constitution. Therefore, a constitutional amendment is essential to protect this qualified basic right and clarify its status in our legal system.

Keywords: human rights, fundamental liberties, freedom of association, dissociation, party-hopping, principles, personal thoughts, qualified rights

Introduction

It means a great deal to those who are oppressed to know that they are not alone. Never let anyone tell you that what you are doing is insignificant.

- Desmond Tutu¹

In this era of modernisation, fundamental rights are vital in order to protect mankind's dignity regardless of their religion, race, skin colour and nationality. This is because all humans are descended from the same primogenitors, Adam and Eve, and are united as one family who submits to God.² Furthermore, those who are beneficial towards other people are the most loved by Him and no one is superior towards other people except on the basis of good deeds and piety as all of them are regarded as His subjects.³ Therefore, the basic rights of mankind act as guidance to ensure that everyone has their rights protected and upheld. These basic rights are, either documented or not documented, in scriptures or written manuscripts.

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¹ Desmond Tutu, '15 Inspiring Human Rights Quotes' (*Amnesty International*, 30 October 2015) <<https://www.amnesty.org/en/latest/campaigns/2015/10/inspiring-human-rights-quotes/>> accessed 15 January 2018.

² Cairo Declaration on Human Rights in Islam 1990, art 1(a) (CDHRI).

³ Cairo Declaration on Human Rights in Islam 1990, art 1(b) (CDHRI).

In Malaysia, human rights are known as "fundamental liberties". It is provided under Part Two of the Federal Constitution, the supreme law of this country. There are numerous provisions enshrined in this part such as personal liberty, equality, protection from slavery and freedom of religion. All citizens of the Federation of Malaysia are granted freedom of speech,⁴ assembly⁵ and association.⁶ Nevertheless, these rights are not absolute as they may be regulated or restricted through federal legislation enacted by Parliament in order to protect public order, morality and security of the Federation.⁷ For instance, the enactment of the Sedition Act 1948, Peaceful Assembly Act 2012 and Societies Act 1966 are to fulfil essential necessities for the benefit of the country.

Furthermore, freedom of association under the Federal Constitution means citizens have the liberty to join and be actively involved in any lawful organisations. There are various organisations formed in Malaysia with different causes, objectives, target groups and ideologies such as the political parties, non-governmental organisations (NGOs), clubs and societies. These organisations must either be registered under the Societies Act 1966⁸ for general associations and political parties or the Youth Societies and Youth Development Act 2007⁹ for youth associations. Some associations are excluded from the requirements to be registered under these Acts and these associations are established through federal legislation such as the Girl Guides Act 1953, Malaysian Red Crescent Society (Incorporation) Act 1965, Scouts Association of Malaysia (Incorporation) Act 1968 and St. John Ambulance of Malaysia (Incorporation) Act 1972.¹⁰ However, nothing in these provisions, including Article 10(1)(c) of the Federal Constitution, explain clearly on the status and application of the freedom of dissociation in our country. Therefore, this paper intends to discuss the freedom of dissociation and the importance of this freedom to be included in the interpretation of freedom of association in the Malaysian Constitution. It begins with an overview of the meaning of dissociation and the status of freedom of dissociation in other legal documents. In the final analysis, the paper concludes with a discussion on the importance of inserting freedom of dissociation in the interpretation of freedom of association under the Malaysian Constitution.

Dissociation: General Overview

There are various definitions of dissociation according to different types of sources such as dictionaries, authors' opinions and scientific terms. These are the examples of words and sentences which describe the meaning of dissociation:

- DBP English-Malay Dictionary: *pemisahan* (act of separating).¹¹
- Oxford Dictionaries: The action of disconnecting or separating or the state of being disconnected.¹²

⁴ Federal Constitution of Malaysia 1957, art 10(1)(a) (MY).

⁵ Federal Constitution of Malaysia 1957, art 10(1)(b) (MY).

⁶ Federal Constitution of Malaysia 1957, art 10(1)(c) (MY).

⁷ Federal Constitution of Malaysia 1957, art 10(2) (MY).

⁸ Societies Act 1966, s 6(1) (MY).

⁹ Youth Societies and Youth Development Act 2007, s 7(1) (MY).

¹⁰ Youth Societies and Youth Development Act 2007, sch 1, ss 1,2,3,4 (MY).

¹¹ Dewan Bahasa dan Pustaka, 'Dissociation' (*Pusat Rujukan Persuratan Melayu*, n.d.) <<http://prpm.dbp.gov.my/cari1?keyword=dissociation>> accessed 18 January 2018.

¹² Oxford University Press, 'Dissociation' (*Oxford Dictionaries*, n.d.) <<https://en.oxforddictionaries.com/definition/dissociation>> accessed 18 January 2018.

- Psychiatry: the separation of normally related mental processes, resulting in one group functioning independently from the rest, leading in extreme cases to disorders such as multiple personality.¹³
- Chemistry: The splitting of a molecule into smaller molecules, atoms or ions, especially by a reversible process.¹⁴
- Biology: separation of a double-stranded DNA molecule into its single strands, occurring when the hydrogen bonds connecting the two strands are broken (e.g. by heating).¹⁵

Furthermore, the freedom of dissociation is the liberty of a person to ignore reality and live like they know everything.¹⁶ It means that everyone should have the right to be ignorant - avoiding the need to know every single thing around us because at times, we cannot do anything to change the current situation where our self-preservation makes it difficult for us to adapt although we try our best to do so. Moreover, besides faith and religion, the call on liberty to detach begins from other perspectives such as politics, spirituality and philosophy.

In conclusion, based on the definitions stated above, dissociation is generally known as the opposite of association which could be described as the withdrawal or separation from an entity, association or society. It can be further explained that every person has the right to dissociate regardless of their religion, race or nationality and thus, it is considered as one of the basic rights that shall be guaranteed.

The Safeguard of Freedom of Association and Dissociation in Foreign Documents

In a broader context, these basic rights are protected under various treaties, conventions and legislation across the globe. The main idea is derived from one of the Universal Declaration of Human Rights 1948 (UDHR) provisions which states:

- (1) Everyone has the right to freedom of peaceful assembly and association.
- (2) No one may be compelled to belong to an association.¹⁷

From my point of view, this provision influences the Member States of the United Nations which ratified this international document to incorporate this provision in their constitutions. Article 20(2) of the UDHR provides that nobody can be forced to stay with any ASSOCIATION but not RELIGION. This is because "association" is defined as a group of people organised for a joint purpose¹⁸ while "religion" means a particular system of faith and worship.¹⁹ Therefore, it is not considered a basic right of a person to dissociate

¹³ Oxford University Press, 'Dissociation' (*Oxford Dictionaries*, n.d.) <<https://en.oxforddictionaries.com/definition/dissociation>> accessed 18 January 2018.

¹⁴ Oxford University Press, 'Dissociation' (*Oxford Dictionaries*, n.d.) <<https://en.oxforddictionaries.com/definition/dissociation>> accessed 18 January 2018.

¹⁵ Biology Online, 'Dissociation' (*Biology Online Dictionaries*, n.d.) <<https://www.biology-online.org/dictionary/Dissociation>> accessed 18 January 2018.

¹⁶ Jeremy E. Sherman, 'Freedom of Dissociation' (*Psychology Today*, 20 December 2016) <<https://www.psychologytoday.com/blog/ambigamy/201612/freedom-dissociation>> accessed 19 January 2018.

¹⁷ Universal Declaration of Human Rights 1948, art 20 (UDHR).

¹⁸ Oxford University Press, 'Association' (*Oxford Dictionaries*, n.d.) <<https://en.oxforddictionaries.com/definition/association>> accessed 20 January 2018.

¹⁹ Oxford University Press, 'Religion' (*Oxford Dictionaries*, n.d.) <<https://en.oxforddictionaries.com/definition/religion>> accessed 20 January 2018.

from the religion either it is inherited from their parents or initially professed unless there are no restrictions imposed by the religion through authentic religious texts and scriptures.

Furthermore, in adopting the stated provision, there are several examples of state constitutions which uphold and grant the freedom of association and dissociation to both citizens and non-citizens. For instance, Article 33 of the Constitution of the Republic of Turkey 1982 provides:

- Everyone has the right to form associations, or become a member of an association, or withdraw from membership without prior permission.
- No one shall be compelled to become or remain a member of an association.
- Freedom of association may be restricted only by law on the grounds of national security, public order, prohibition of commission of crime, public morals, public health and protecting the freedoms of other individuals.

The provision in the Constitution of the Russian Federation also *in pari materia* with the provision under Article 20 of the UDHR 1948 which affirms:

1. Everyone shall have the right to association, including the right to create trade unions for the protection of his or her interests. The freedom of activity of public association shall be guaranteed.
2. No one may be compelled to join any association and remain in it.²⁰

In Brazil, its federal constitution broadens the context of the freedom of association and dissociation. The specifications are as follows:

- XVII – freedom of association for lawful purposes is fully guaranteed, any paramilitary association being forbidden;
- XVIII – the creation of associations and, under the terms of the law, that of cooperatives is not subject to authorization, and State interference in their operation is forbidden;
- XIX – associations may only be compulsorily dissolved or have their activities suspended by a judicial decision, and a final and unappealable decision is required in the first case;
- XX – no one shall be compelled to become associated or to remain associated.²¹

Referring to Article 5(17) of the Brazilian Constitution, it clearly describes that citizens and foreigners residing in Brazil are granted the liberty to associate only with legal objectives and restricting the establishment of paramilitary association. Nevertheless, paramilitary activities are not the one and only action that is detrimental to the public order in Brazil. This is because there are various circumstances that might disrupt the harmonious and peaceful situation in this South American country such as conspiracy against authority, terrorism, drug dealings, et cetera. Thus, it is also essential for Brazil through its Chamber of Deputies to specify other associations that carry out harmful activities in order for their freedom of association to be constrained or eradicated.

Additionally, in several countries which adopt full or partial common law systems such as Canada, Pakistan and Maldives, there are no specific provisions of liberty to

²⁰ Constitution of the Russian Federation 1993, art 30 (RU).

²¹ Constitution of the Federative Republic of Brazil 1988, arts 5(17), (18), (19), (20) (BR).

detach in their constitutions. The Constitution Act of Canada 1982 provides in article 2 that:

Everyone has the following fundamental freedoms:
 ... (d) freedom of association.²²

In Pakistan, its Constitution grants the rights of freedom of association for its citizens subject to limitations prescribed by the law in the interest of integrity or sovereignty, public order or morality of Pakistan²³ which is *in pari materia* with Article 10 of our Federal Constitution. Likewise, Maldives Constitution specifies the safeguard of this basic right in Article 30 that reads as follows:

- (a) Every citizen has the right to establish and to participate in the activities of political parties.
 (b) Everyone has the freedom to form associations and societies, including the following:
1. the right to establish and participate in any association or society for economic, social, educational or cultural or purposes;
 2. the right to form trade unions, to participate or not participate in their activities.²⁴

Hence, based on the observations and commentaries on the foreign documents and constitutions, some of them undoubtedly incorporated the right to detach for its citizens and foreigners who are residing in their countries and regarded it as a connecting element of the freedom of association in accordance with Article 20 of the UDHR 1948.

Liberty of Detachment in Malaysia: Boon or Bane?

The issues on the right to separate and to prevent oneself from associating to any associations are not commonly discussed and debated. Generally, Malaysians are accepting of the fact that no one should be obligated to join any organisations or in other words, the right to not associate. Moreover, the scope of the freedom of association is broadened to the extent of the right to dissolve existing associations and separate from an association.²⁵ Consequently, the adoption of the freedom of association shall be applied in both ways, which means the right to dissociate should also be integrated together.²⁶

In my opinion, this fundamental liberty enshrined by our Federal Constitution comprises both rights i.e. to associate and to dissociate. This is because the liberty to detach is vital as sometimes, we may not share same thoughts and opinions with others within the association. Although we should appreciate diversity, it is beneficial to dissociate in order to retain our self-principles that distinguish us from others. Furthermore, it is crucial that this right is upheld together with the freedom of speech and assembly, as these are considered as democratic platforms for non-violent changes.²⁷ As a democratic country, Malaysia has to provide the space for its citizens to exercise these

²² Constitution Act of Canada 1982, Canadian Charter of Rights and Freedoms, art 2(d) (CA).

²³ Constitution of the Islamic Republic of Pakistan 1973, art 17(1) (PK).

²⁴ Constitution of the Republic of Maldives 2008, art 30 (MV).

²⁵ Shad Saleem Faruqi, *Document of Destiny* (1st edn, Star Publications (Malaysia) Berhad 2008) 320.

²⁶ Interview with Azmi Sharom, Associate Professor, Faculty of Law, University of Malaya (Kuala Lumpur, Malaysia, 4 February 2018).

²⁷ Abdul Aziz Bari and Farid Sufian Shuaib, *Constitution of Malaysia: Text and Commentary* (1st edn, Pearson Malaysia Sdn. Bhd. 2004) 35.

rights legally. Therefore, this is the main objective to include the right to detach, together with other rights guaranteed under Article 10(1) of the Federal Constitution, as long as it is in compliance with the Acts of Parliaments enacted on the grounds specified by the supreme law of the land.

Nonetheless, in spite of the fact that granting the freedom to do so is important, it still has its own disadvantages if it is considered as an absolute right. This is because if there are no qualifications on this matter, the people will take it solely for their own advantages rather than also considering the interests of the association or society. Furthermore, they will also tend to ignore current issues taking place in our society or communities. Further, acute forms of dissociation can regularly interfere with the ability to stay in connection with reality and to function on a regular basis with day to day activities.²⁸

It is undeniable that at certain times, we have to sacrifice our own principles and beliefs to realise society's aspirations to ensure the sustainability and adaptability of their associations in facing challenges. Moreover, this right shall not be granted absolutely and must come with limitations. Despite the fact that all citizens are granted this right, Parliament is authorised by the Federal Constitution to restrict this right by virtue of Article 10(2)(c) under several grounds. Consequently, all fundamental liberties provided under Article 10(1) are not considered as absolute rights but qualified rights as the Federal Constitution subordinates personal rights to maintain public order, social stability and national security.²⁹

Dewan Undangan Negeri Kelantan & Ors v Nordin bin Salleh & Anor - Upholding the Freedom of Dissociation: A Brief Analysis

In the Malaysian context, the members of any political parties also have the right to resign from their respective parties. This is because there are no anti-party hopping laws enacted by Parliament to ensure their loyalty towards the party's objectives and aspiration. For instance, it is upheld in the case of *Dewan Undangan Negeri Kelantan & Ors v Nordin bin Salleh & Anor*³⁰ that any members of the legislature cannot be denied their right to dissociate from the political party which they represented when contesting for the constituencies and their legislative seats also cannot be vacated due to their actions. In this case, the first and second respondents won the seats of *Sungai Pinang* and *Limbongan* separately through *Semangat 46* Party tickets in the General Election held on 21 October 1990 and consequently, they were sworn in as members of the Kelantan Legislative Assembly. After that, the appellant passed the amendment to the Kelantan State Constitution by the addition of Article 31A which provides:

- (1) If any member of the Legislative Assembly who is a member of a political party resigns or is expelled from, or for any reasons whatsoever ceases to be a member of such political party, he shall cease to be a member of the Legislative and his seat shall become vacant.
- (2) For the purpose of Clause (1), the Legislative Assembly shall determine whether a seat has become vacant or as to when a seat becomes vacant and

²⁸ GoodTherapy.org, 'Dissociation' (*GoodTherapy.org*, 12 May 2016)

<<https://www.goodtherapy.org/learn-about-therapy/issues/dissociation>> accessed 28 March 2018.

²⁹ Shad Saleem Faruqi, *Document of Destiny* (1st edn, Star Publications (Malaysia) Berhad 2008) 195.

³⁰ [1992] 1 MLJ 697 (Supreme Court of Malaysia).

the determination of the Assembly shall be final and shall not be questioned in any Court on any ground whatsoever.

On 3 July 1991, the first appellant passed a resolution pursuant to the questioned legislation that the first and second respondents had ceased from becoming members of the Kelantan State Legislative Assembly and pronounced their seats vacant. Due to the declaration, the Election Commission of Malaysia took steps to hold by-elections in the aforementioned constituencies, with the dates of nominations of candidates set for 12 August 1991 and the by-elections held and completed on 26 August 1991. In the aforesaid by-elections, the respondents stood for election as candidates of the *Barisan Nasional* but lost. The issue was whether the Article 31A of the Kelantan State Constitution was valid to restrict the freedom of association granted by the Federal Constitution. Accordingly, the Supreme Court affirmed the High Court's decision by dismissing the appeal and the judgment was delivered by Abdul Hamid Omar LP. The ratio in deciding the judgment was that only Parliament may enact laws to regulate and restrict the freedom of association by virtue of Article 10(2)(c) of the Federal Constitution and not the state legislative assemblies. One of the bases of the judgment is the case of *OK Ghosh v EX Joseph*,³¹ where the Supreme Court of India pronounced that any constraint to separate from an association would make the assured right under Article 19(1)(c) of the Indian Constitution ineffective and illusory. Therefore, the amendment to the Kelantan State Constitution through the addition of Article 31A to restrict the freedom of dissociation was ineffective and declared as void.

Nonetheless, the Supreme Court's decision is still contentious whether it enriches democracy as it nullified the particular provision of the Kelantan State Constitution which restricts members of a political party from hopping to another party in order to safeguard their loyalty towards the party.³² Furthermore, this kind of situation causes much unsteadiness in parliamentary governments,³³ a branch of democratic system which Malaysia adopted through the influence of the British Westminster system. Malaysians normally think that the politicians who always hop from a party to another as not having strong self-principle or in simpler terms, idealists. Instead, they are inclined to become realists by finding the way to succeed in their political careers and increasing their political mileage, rather than fighting for the people's rights and betterment. Moreover, this group of politicians are often being labelled as traitors by their initial political party in particular when they associate with their party's opposition. Therefore, these are the situations and explanations which illustrate the drawbacks of party-hopping in our country.

From my point of view, this landmark case is relevant to support the notion of the incorporation of the liberty to detach from the freedom of association. This is supported by Abdul Hamid Omar LP in this case that the provision seeks to impose a restriction on the fundamental right of a member of the legislature to form associations, which of course

³¹ 1963 AIR 812 (Supreme Court of India).

³² Andrew Harding, *Law, Government and the Constitution of Malaysia* (1st edn, Malayan Law Journal Sdn. Bhd. 1996) 199.

³³ Shad Saleem Faruqi, *Document of Destiny* (1st edn, Star Publications (Malaysia) Berhad 2008) 154.

includes the right to dissociate. Hence, this idea is certainly right and shall be taken into consideration in discussing the context of freedom of association.

Conclusion

In a nutshell, freedom of dissociation should be interpreted as an integral element of fundamental liberties which is provided alongside the freedom of association in the Federal Constitution. Although our Constitution appears to be impliedly incorporating the right to dissociate as provided under Article 20(2) of the UDHR 1948, such interpretation may still require constitutional amendments similar to that which has been provided in the constitution of other countries. The importance of the amendment is to elucidate this right in the Federal Constitution without any doubts and prevent it from being challenged as not guaranteed either in the Constitution or an Act of Parliament. Thus, this basic right is essential to be granted in order to ensure that all citizens have the right to detach from any associations, organisations or societies.

On the other hand, it has to be reminded that this right is not absolute but qualified as it is still subjected to the restrictions imposed through legislation enacted by Parliament. Everyone has their own principles and beliefs, different from that of others. Diversity in terms of opinions and thoughts should be accepted and appreciated in a harmonious way amongst individuals and associations so as to provide some private space for them to uphold their own principles.