

Rights come with responsibilities

By ANIZA DAMIS

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IN the past three months, some Malaysians have suddenly found a passion for demonstrating. Some of these walks have resulted in arrests and allegations of criminal activity. But does this mean walking is bad altogether? In observance of International Human Rights Day tomorrow, ANIZA DAMIS speaks to founding former Human Rights Commission of Malaysia (Suhakam) chairman Tun Musa Hitam about the rights and responsibilities that come with freedom of expression, and how we should try to allow it.

Q: Is peaceful assembly a right?

A: Peaceful assembly relates to the right to free expression, the right that is given to human beings to express their views. It also relates to freedom of the press, where you are given the right environment, the opportunity, and the freedom to express yourselves through the media. That can be extended to the electronic media and the Internet.

Expression comes in different forms. It also relates to the right to demonstrate your feelings, by word or by act.

Freedom in a democratic society is quite clear. People do have a right to demonstrate and they must be given the right.

But such freedoms have been, and indeed have the possibility of being, exploited and used for objectives other than the democratic right and wishes of the people who want to express themselves within a democratic environment.

One has always to be aware of that potential. In some countries, there is the existence of anarchists. Anarchists don't believe in anything, they just want to destroy.

If you realise the potential and accept the possibility of abuse and misuse, yet still demand the freedom to express yourself, then you would be suited to this form of democracy.

We have had experience of violence, like May 13, 1969 and the (1974) Baling demonstration against the low price of rubber, which I had to handle myself. And we also have the experience of Memali, which had very strong religious fervour, which I also handled. We've also had demonstrations related to education that resulted in arrests.

These experiences are always evoked whenever you talk about demonstrations.

I believe this could be used as a basis in handling demonstrations, but it need not be used as excuses not to allow people to express their views.

Q: Is the right to peaceful assembly an absolute right?

A: No. Nothing is an absolute right in this world.

Q: Why is it that we have never experimented with peaceful assembly?

A: During the time I was with Suhakam, I tried my very best to get organised demonstrations accepted, organised in the sense that all parties assume responsibility together.

I am an adviser to the government of Maldives on government reforms. Maldives had been under one president, President Qayyum, for 28 years.

After 28 years, the president said: "We want reforms." I was appointed adviser.

Almost immediately, he lifted one-man-rule and gave freedom to political parties, as never before in 28 years. He allowed freedom of expression.

My God! They went to town with it! They started jabbering and cursing the president, and it ended up in riots. There were lots of riots. The president was getting angrier and angrier.

One day, I said: "Mr President, why don't you try this: allow them to demonstrate, but keep the police away. Put them on standby alert. If possible, don't let them be seen."

He was a little hesitant but I said: "Why don't you try?"

There is no better treat for criminal elements, especially anarchists, and those in politics who would benefit from violence, than the highly visible presence of police in or around the area where the demonstration is taking place. This will give them a definitive target. They carry stones and throw them at the policemen, they jeer at them and provoke them.

I said: "If you keep the police away and let the demonstrators shout themselves out for two or three hours, maybe everything will be all right. Please, why don't you try this once, just once?"

And, you know, they did.

On my next visit, I got feedback on the demonstration. They were angry, they threw some things at some shops, and they shouted themselves hoarse. After that, they dispersed. Nobody got arrested. The point is, it can be done.

In Malaysia, I am very clear on the sort of orderly demonstration that I am suggesting.

People must apply for permits, but the application is not for the purpose of restricting demonstrations.

Once approved, you need to comply with certain very strict procedures. You must be responsible for orderliness by appointing a list of marshals to be identified and identifiable. You must ensure cleanliness. Certain sites or routes must be determined. All this is so that there is accountability and responsibility.

Traffic and regular police will be there to ensure orderliness. At the same time, they must also make known that there will be riot police at hand, in case anything goes wrong.

This agreement must be signed and sealed. If necessary, pass a law, or a by-law that relates to it. Then, people will get used to this culture.

Of course, it might not work. The authorities or the demonstrators might create trouble deliberately.

But try this. Some experiments I tried during my tenure as Suhakam chairman showed that it could work.

Q: So what's happened since you left (in 2002)?

A: They didn't allow it.

Q: Why?

A: Don't ask me. I'm not in the government! When I had some influence and power, I could get it done.

Q: Is this something that Suhakam should do?

A: They should. A minor criticism about Suhakam is that, as of now, they don't want to touch on these sensitive things.

They don't have to shout or make statements, they could go on a quiet trial, get things prepared. They could and should start activating this section of Suhakam to contribute to the orderliness and acceptability of demonstrations.

If something happens, have a system of inquiry. Find the guilty one. This should be included in the by-laws.

Why can't we have such a system? I feel all this needs dialogue and an exchange of views of all stakeholders.

Q: The system right now is, if you want to assemble, you have to apply for a police permit.

A: And almost automatically it's refused. So, you stop there.

Q: So, if it's refused, the assembly is illegal?

A: Yes, it's illegal.

Q: Some people feel there is a biased allocation of permits.

A: There are biased allocations, in so far as the applicants are concerned. In so far as the government is concerned, they say they are not biased.

But therein lies the problem.

Again, we're back to where we started. If you have a focused examination of the situation, the ways and means, and formed a methodology or systematic approach, maybe it might work.

The point I am trying to make is that it has never been tried. It is just dismissed automatically as something that is going to be a sure disaster.

Psychologically, when you say "demonstration", you are sure there is going to be violence. It is in the psyche of the people, in the psyche of the police to begin with, and in the psyche of the

demonstrators. They are ever ready for the police to attack them, and the police are ever ready to be attacked.

You cannot be like that.

I do know that even in the most developed countries, there have been riots. But the issues are different. In France, how many times have they had riots? How many times have they used tear gas and water cannons? They have. The issues there are much more serious. But the system works.

In Malaysia, recently there were two demonstrations, both ending up the way they did. Which was bad. On TV it was very bad.

But I say, well, if you were to have orderliness, maybe it would not be that bad.

Again, what I am trying to say is, "Try, lah!"

The law needs to be adapted. If you accept the principle of expression of views in terms of demonstrations to be positive, then work on it.

Governments always think, "No, it has always caused violence, it is sure to cause violence." So the people think demonstrations are violent. Either they run away or get involved, ready for violence.

I am trying to change the mindset. I know I may sound idealistic, but I am saying it based on my conviction and my experience.

Q: The government believes if you are unhappy, you should make an appointment with the government and tell them what's wrong.

A: Let's talk about the Indian problem. Incidentally, we're all Malaysians. Their problem in this country is genuine.

Of course, we have a party that claims to be representing the Indians, but obviously, they feel that they are not satisfied with the representation, and that the representation of the Indians are considered by them not to be effective. Obviously, they are desperate. And I know, in many cases, they have genuine grievances.

Once they (irresponsible elements) take over there is no accountability, no responsibility and no legal legitimacy. And then, they were prepared to go to the absolutely ridiculous, criminal and irresponsible act of telling the world that we, Malaysia, commit ethnic cleansing.

My point is that, try my method. Try, lah!

Q: Is the use of force justified in dispersing peaceful people?

A: If you had rules and regulations which include an investigation into a situation where violence takes place, immediately Suhakam, or whoever, must start an inquiry. Then the blame game can go there. Not here, in the newspapers or the blogs.

Q: In an illegal rally, is it justified to use force?

A: No, not by anybody.

The police will tell me, in many cases it is true, that they are provoked. But, like in the Maldives,

they (anarchists) love to see the police. They have a target because, as the police, you represent the government.

So, you take action, and then there's a reaction.

Q: Is Malaysia ready for peaceful assemblies?

A: Yes! Come on, we have been independent for 50 years.

In the old days, after the demonstrations by the Indians, there would have been retaliation immediately.

Q: By whom?

A: By Malays, maybe. No way could the Indians have avoided retaliation.

I know there are rumours of plans (of retaliation). But the point is that now there is maturity, lots of talk in the press and the blogs. I think it's healthy.

Q: So, what should the government's next step be?

A: I just told you! Get organised! Or ask Suhakam to do it. Come up with a working paper, start with that.

It's not that this has never been attempted — we did — but this was in Tun Dr Mahathir's time. This is Abdullah's time, he's more liberal, more open. People ask him to impose the ISA, he said it could be used but under specific circumstances. It's so comforting when he says it; as against the old days.

It's necessary to make this comparison between the old days and the present.

I was at parliament speaking to the members of the Asean Inter-Parliamentary Caucus on Good Governance. Lim Kit Siang was chairing my speech. I got up and said: "What a nice sight. In the old days, there was no place, even in this international forum, for opposition leaders." They all laughed.

That's change. I'm telling you, we are mature. Provided, that is, and I always have this qualification, that there is economic progress going on.

Of course, everybody has complaints. Malays have complaints. But the Tamils are such a minority and they don't form an important force, so people don't seem to pay too much attention to them. But they need this attention.

This is a question of attitude. I am so happy that the prime minister actually directed the MIC to look into the matter. But they should not have been told by the prime minister. It should have been an on-going thing. Maybe they need to have a good, fresh look at themselves.

Q: You said earlier that rights come with responsibility. What if demonstrations impinged on other people's rights?

A: I'm telling you, try my way. If advance notice is given, and routes are determined, orderliness is ensured, people are going say: "Look, there's a demonstration. It's going to pass through here. Come, let's watch."

It's never been tried.

Every day, it comes out in the newspapers, businessmen saying: "This is not good for business, we

lose a lot.”

I know the tricks. The TV saying every day that Ini bukan budaya kita (this is not our culture).

I'm sorry for ridiculing this, but where is there a budaya (culture) of violence anywhere in the world? Do you think violence is a French budaya? Indonesians? Filipinos?

These are partisan expressions. It's not an accusation, it's a fact.

If you follow my suggestion, Malaysia might be one of the first developing nations to try this.

Then, if the demonstrators don't observe the regulations, impose severe penalties. Again, include this in the law. Have a system of inquiry ready.

This is a non-partisan view. Don't anybody dare tell me that I'm anti-government, or anti-Umno.

I am saying this in the national interest, with pride and an awareness that Malaysia needs much better orderliness and guidance as far as this is concerned.

Q: Do you think the concept of the right to freedom of expression in Malaysia is a middle class idea?

A: No. What about those people in Baling? They were not middle class. They were poor smallholders.

You cannot dismiss people. We should not recognise them in order to arrest them. That's negative.

The right to peaceful assembly is enshrined in our democratic institution. That right also gives the right to the government to refuse.

The thing at issue is not that the rights are not there. The rights exist. It is the application of the right and the administration of the right that I am taking issue with.

This matter is an everyday affair, it is of interest to all political parties. They have one common interest, they want to express themselves on the one hand, and, in spirit, the government wants to allow them.

Q: Should the possibility of a riot justify depriving people of the right to be heard?

A: You say “the possibility”. Once I accept this, the government authority will say: “There is a possibility of a riot.” Full stop. Rejected.

The possibility of a non-riot, non-violence, has never been looked at.

The rules and regulations to establish orderliness have never been tried. Tried — that's the point.

It could fail. But try it.

This government and administration is very liberal and tolerant. But what is happening is that, the anti-government forces are pushing the government to see its limits.

So the survival of liberalism and tolerance depends on the ability of all to contribute. It is in the interest of all to see that this liberalism and tolerance survive. It is in the interest of all.

Q: If the government doesn't come up with a system, what would this say about human rights

and about us?

A: The government has the right to say no. The government has a right to refuse. But if it does, I'll be disappointed.

Try, lah!

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