

**MUHAMMAD HILMAN IDHAM & ORS v. KERAJAAN MALAYSIA & ORS**  
**HIGH COURT MALAYA, KUALA LUMPUR**  
**AZIAH ALI J**  
**[ORIGINATING SUMMONS NO: R1-24-47-2010]**  
**29 SEPTEMBER 2010**

*CONSTITUTIONAL LAW: Fundamental liberties - Freedom of speech and expression - Whether restriction imposed by [s. 15\(5\)\(a\) Universities and University Colleges Act 1971](#) violates [art. 10\(1\)\(a\) Federal Constitution](#)*

*CONSTITUTIONAL LAW: Fundamental liberties - Restriction of freedom - Whether restriction imposed by [s. 15\(5\)\(a\) Universities and University Colleges Act 1971](#) reasonable within [art. 10\(2\)\(a\) Federal Constitution](#) - Whether pith and substance of impugned law relates to permitted restrictions - Restriction in [s. 15\(5\)\(a\)](#) expedient in interest of public order or morality to maintain discipline of students - Restriction not absolute - Restriction in [s. 15\(5\)\(a\)](#) does not violate [art. 10\(1\)\(a\)](#)*

The plaintiffs were undergraduate students of the 3rd defendant. The plaintiffs had been present in the constituency of Hulu Selangor during the campaign period for the parliamentary by-election of 24 April 2010. As a result, the plaintiffs received notices from the 3rd defendant's Vice Chancellor requiring them to attend before a disciplinary tribunal. Disciplinary proceedings had been instituted against them for alleged breaches which constituted offences under [s. 15\(5\)\(a\) of the Universities and University Colleges Act 1971 \('Act 30'\)](#). The plaintiffs then filed this originating summons seeking a declaration that [s. 15\(5\)\(a\) of Act 30](#) contravenes [art. 10\(1\)\(a\) of the Federal Constitution](#) and is therefore invalid, and for a consequential declaration that the pending disciplinary proceedings that had been instituted against the plaintiffs by the 3rd defendant were not valid in law. The plaintiffs contended that [s. 15\(5\)\(a\)](#) violates their constitutional right to freedom of speech and expression under [art. 10\(1\)\(a\) of the Federal Constitution](#). The sole issue for determination was whether [s. 15\(5\)\(a\) of Act 30](#) violates [art. 10\(1\)\(a\) of the Federal Constitution](#) and is thus invalid.

**Held (dismissing the application with costs):**

(1) When the State relies on one or more of the provisions of [art. 10\(2\)](#) to justify a statute, then the question for determination is whether the restriction that the particular statute imposes is "reasonably necessary and expedient" for one or more of the purposes specified in that article. (para 19)

(2) When infringement of the right of freedom of speech and expression is alleged, the scope of the court's inquiry is limited to the question whether the impugned law comes within the orbit of the permitted restrictions. If the impugned law in pith and substance is a law relating to the subjects enumerated under the permitted restrictions found in [art. 10\(2\)\(a\)](#), the question whether it is reasonable does not arise and the law would be valid. The objects of the impugned law must be sufficiently connected to the subjects enumerated under [art. 10\(2\)\(a\)](#). The connection contemplated must be real and proximate, not farfetched or problematic. (para 22)

(3) [Article 10\(2\)\(a\)](#) enables Parliament to impose by way of legislation such restrictions on the rights conferred by [art. 10\(1\)\(a\)](#) as it deems necessary or expedient in the interest of public order or morality. Discipline of students and conduct of students as a whole is a matter connected with the administration of such institutions. There is no discrimination in its application to such students. The restrictions as contained in [s. 15\(5\)\(a\)](#) is to address the potentiality for disturbance of the life of the student community in the Universities and University colleges which can amount to disturbance of public order and the tranquillity of society. The restriction imposed is necessary or expedient to maintain discipline of students which is part of public morality and which the students must observe. Further the restriction is not absolute as [s. 15\(4\)](#) allows the Vice-Chancellor, on an application, to give exemption to a student subject to such terms and conditions as he thinks fit. Hence, the restriction imposed *vide* [s. 15\(5\)\(a\) of Act 30](#) comes within the scope of and does not violate [art. 10\(1\)\(a\) of the Federal Constitution](#). [Section 15\(5\)\(a\)](#) is therefore valid. (paras 26 & 27)

**Case(s) referred to:**

*AK Gopalan v. State of Madras (AIR) SC 29 (refd)*

[Chor Phaik Har v. Farlim Properties Sdn Bhd \[1994\] 4 CLJ 285 \(refd\)](#)

[Darma Suria Risman Saleh v. Menteri Dalam Negeri, Malaysia & Ors \[2010\] 1 CLJ 300 FC \(refd\)](#)

[Dr Mohd Nasir Hashim v. Menteri Dalam Negeri Malaysia \[2007\] 1 CLJ 19 CA \(refd\)](#)

*Dr Ram Manohar Lohia v. State of Bihar [1966] 1 SCR 709 (refd)*

*Harpal Singh v. Devinder Singh & Anor [1977] AIR (SC) 2914 (refd)*

*Kanu Biswa v. State of West Bengal AIR [1972] SC 1656 (refd)*

[PP v. Ooi Kee Saik & Ors \[1971\] 1 LNS 113 HC \(refd\)](#)

[PP v. Pung Chen Choon \[1994\] 1 LNS 208 SC \(refd\)](#)

[Re application of Tan Boon Liat @ Allen; Tan Boon Liat v. Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors \[1976\] 1 LNS 126 HC \(refd\)](#)

[Sivarasa Rasiah v. Badan Peguam Malaysia & Anor \[2010\] 3 CLJ 507 FC \(refd\)](#)

*Sojam Francis v. Mahatma Gandhi University, Kottayam & Ors AIR [2003] Kerala 290 (refd)*

**Legislation referred to:**

[Federal Constitution, arts. 4\(1\), 8, 10\(1\)\(a\), \(2\)\(a\)](#)

[Printing Presses and Publications Act 1984, s. 8A\(1\), \(2\)](#)

[Universities And University Colleges Act 1971, s. 15\(1\)\(a\), \(4\), \(5\)\(a\)](#)

Constitution of India [India], art. 19(1)(a), (c)

**Other source(s) referred to:**

Sir Ivor Jennings, *The Law And The Constitution*, 5th edn, p 259

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*For the 3rd defendant - Dato' Sri Muhammad Shafee Abdullah (Sarah Abishegam with him); M/s Shafee & Co*

*Reported by Amutha Suppayah*