

EDITOR, NEWS DESK

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**FREEDOM OF EXPRESSION AT STAKE: SUHAKAM RESPONDS TO THE
APPLICATION OF THE SEDITION ACT, PENAL CODE AND CMA IN A
JOURNALISTIC CONTEXT**

KUALA LUMPUR (21 JANUARY 2026) - The Human Rights Commission of Malaysia (SUHAKAM) takes note of a question posed by a journalist, Rex Tan, at a public lecture which has generated public debate, particularly on issues relating to racial discrimination. SUHAKAM recognises the sensitivity of the question raised and the subsequent reactions that have affected social harmony within the Malaysian community. We emphasise that matters relating to racial discrimination are serious and must be addressed through open, honest and inclusive public discourse, in line with the constitutional values of equality and non-discrimination.

At the same time, SUHAKAM is appalled that the journalist was arrested and is being investigated under Section 4(1) of the Sedition Act 1948, Section 505(c) of the Penal Code and Section 233 of the Communications and Multimedia Act (CMA) 1998, as stated in the media statement issued by the Royal Malaysia Police (PDRM). In this regard, SUHAKAM wish to refer to the decision of the Court of Appeal in *Heidy Quah Gaik Li v Kerajaan Malaysia* (26 August 2025), where the Court held that the words “offensive” and “annoy” in Section 233 of the CMA constituting an offence, to be inconsistent with Article 10(1)(a) and (2)(a) read with Article 8 of the Federal Constitution, and hence, unconstitutional and void.

The invocation of multiple criminal provisions in response to journalistic questioning on matters of public interest raises serious implications for the exercise of freedom of expression and media freedom in Malaysia. SUHAKAM is of the view that actions taken by the authority are too harsh as to tantamount to an overkill. Such an approach reflects an outdated and intolerant mindset that prioritises punitive measures over engagement, dialogue and rights-based responses. SUHAKAM stresses that there is an urgent need for a shift in mindset on the part of enforcement agencies towards approaches that are proportionate, measured and consistent with democratic values and fundamental liberties. The actions taken raise serious questions of compatibility with the freedom of speech and expression guaranteed under Article 10 of the Federal Constitution.

SUHAKAM wishes to highlight that Section 233 of the CMA 1998 is intended to address the misuse of network facilities or services for improper online communications. The journalist’s question was asked verbally during a physical public forum and was not transmitted online by him. Section 233 applies only to communications initiated or transmitted via network services, and any recording or online dissemination by a third party does not attract liability to the speaker. In the absence of evidence that the journalist initiated or participated in the online transmission, Section 233 is inapplicable.

SUHAKAM further notes that Section 505(c) of the Penal Code criminalises statements that may incite fear or alarm among the public or disturb public tranquillity. While the maintenance of public order is a legitimate objective, the application of this provision must be approached with caution, particularly where the expression in question forms part of journalistic inquiry or public discussion on matters of public interest. Any restriction imposed must meet the constitutional test of legality, necessity and proportionality.

MEDIA STATEMENT HUMAN RIGHTS COMMISSION OF MALAYSIA (SUHAKAM)

SUHAKAM is consistent with its longstanding position that the Sedition Act 1948 is overly broad and susceptible to arbitrary application, creating a chilling effect on legitimate discourse, especially on issues of public importance. Its preventive nature, which does not require proof of actual harm, poses significant risks to fundamental freedoms in a democratic and plural society. We wish to emphasise that criminal proceedings against journalists should be used only as a measure of last resort. Matters relating to journalistic ethics or professional conduct should primarily be addressed through robust and effective self-regulatory mechanisms, consistent with democratic principles and international best practices in the protection of media freedom.

In view of the above, SUHAKAM calls upon the Government to:

- i. Repeal the Sedition Act 1948 and Section 233 of the Communications and Multimedia Act 1998, and undertake comprehensive legislative reforms to ensure full alignment with constitutional guarantees and international human rights standards;
- ii. Adopt non-punitive, rights-based approaches in addressing sensitive issues such as race and discrimination, including through dialogue, education and institutional reforms; and
- iii. Strengthen and accord due recognition to the Malaysian Media Council (MMC) as the primary independent self-regulatory mechanism for the media, including by prioritising recourse to the MMC in addressing complaints against journalists before any criminal proceedings are initiated.

SUHAKAM reiterates that freedom of expression and media freedom are fundamental pillars of a democratic society. While the Federal Constitution permits restrictions in the interest of public order, such limitations must always be lawful, necessary and proportionate. Safeguarding these rights, alongside the promotion of responsible journalism, is essential for democratic governance, social cohesion and public trust.

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Human Rights Commission of Malaysia (SUHAKAM)

Date: 21 January 2026