

To Vote or Not to Vote: The Rights and Liberties of Voters in The Electoral System

Rasyikah Md Khalid* - Faculty of Law, Universiti Kebangsaan Malaysia, Malaysia.

Evien See- Faculty of Law, Universiti Kebangsaan Malaysia, Malaysia.

Paavana Pooja Rajasegaran-Faculty of Law, Universiti Kebangsaan Malaysia, Malaysia.

Suhaimi Ab Rahman, Universiti Putra Malaysia, Malaysia.

Asaad Ghali Hamzah- Al-Mustaqbal University College, Iraq.

Received: 25/04/2023

Accepted: 22/06/2023

DOR:20.1001.1.17354331.1402.19.0.1.4

Abstract

Voting is one of the most significant ways for individuals to make a say in the government's decision-making. A ballot is the bedrock to democracy which may be also argued as a formal expression of choice for a candidate or a proposed solution to an issue. The low turnout rate in the recent Malaysian by-election in Johor, Malacca and Sarawak as well as the 15th General Election (GE15) has led to the discussion on the rights to vote and not to vote. The primary issue to be addressed in this article is whether the right not to vote violates morality in the political context and whether or not such a right constitutes freedom of expression. Furthermore, the relationship between the state and the people will also be studied further in order to determine the responsibilities of the people. The primary objective of this article is to determine the relationship between low voter turnout rates from certain groups of communities and the validity of their decision to vote or not to vote in a legal and moral paradigm. The authors will collect data from primary and secondary sources such as books and journals related to the right to vote and not to vote in different political systems. The authors will also analyze data from books, journals, articles and more to make reasonable comparisons between the democratic system in Malaysia and in other countries that discuss the right not to vote.

Keywords: Voting Rights; liberties; Electoral System; Political System; Democracy; Moral Rights.

* rasyikah@ukm.edu.my

1.Introduction

The idea of a well-balanced, harmonious society of a State in particular, postulates an integrated relationship between the ruling government and its subjects regardless of its respective diverse population. In such an inclination, democracy acts as a mediator between both ends as a mode of political association of general control over a State that is habitually regulated by the community in tandem with consent and popular participation. It is well established that democracy platforms a correlation between good governance as well as the exacerbation of political and economic development of the State. Hence, it is a significant instrument in managing social and economic conflict. In countries that upheld democracy, electoral systems are the core of governmental formation by which all groups including the vulnerable are given equal opportunities to choose and elect the rulers of their preference. Subsequently, these elected leaders are vested with the duty of shaping the national socioeconomic policies to uplift the standard of living, attend to economic globalisation demands and dictate on the crux of the machinery of the government.

a) The Malaysian Electoral System

Malaysia attained its independence in 1957. When the British ended its reign, they agreed to form the federation of Malaya consisting of 11 states of Peninsular Malaysia. This federation was enlarged to 14 states, with the addition of Sabah, Sarawak, and Singapore and became the federation of Malaysia. Due to the federation system, there were three levels of election, the general election to elect the members of Parliament, the state election to elect the state legislative assembly, and the local government election to elect the government for the districts. Each level of governments has their own legislative mandates and responsibilities, and to some extent should not interfere with the jurisdiction of another (Md. Khalid, 2021:68-70). Nevertheless, there are different approaches of relationship between different levels of government, and it ranges from being exclusive to very cooperative (Md. Khalid and Jalil, 2018:118-122).

Electoral system is a representation of democracy, acts in determining the political discourse in its nature and form as well as the parliamentary representations which decides who is eligible to vote, the number of representatives per area, the body that oversees the course of elections and the method of vote counting (Lopez,2022:1). In regard to the 1953-54 formulation, compulsory voting was rejected, and weightage was placed on federal citizenship and registration. At that time, most citizens were non-

Malays and the United Malays National Organisation (UMNO) accommodated Malayan Chinese Association's (MCA) desire to extend this right to non-citizen adults of 21 years of age and above who met minimum requirements as a resident. After numerous oppositions, reformations and amendments, the 1957 Malayan Electoral System was then established but formulated before independence. Furthermore, based on the Malaysian Act 1963, the 1963 Electoral System was established and extended to citizens of Sabah and Sarawak.

According to Malaysia's second Prime Minister, Tun Abdul Razak Hussein, "...the view we take is that democratic government is the best and most acceptable government. So long as the form is preserved, the substance can be changed to suit conditions of a particular country."

Despite being upheld by means of a constitutional monarch with the Paramount Ruler, His Majesty the King, a democratic electoral system gives the citizens the right to vote for their government of choice. Under Article 114 of the Federal Constitution, the Election Commission of Malaysia was established to study and re-delineate, once in eight years, the Parliamentary and State Electoral Boundaries. It also undertakes processes of registration of voters, reviews the electoral roll review and conducts general election for the House of Representatives (Dewan Rakyat) or the State Legislative Assembly. In an event where there is a vacancy, the Election Commission conducts a by-election. Hence, it can be noted that the Election Commission preserved, supervised as well as maintained the democratic processes to ensure fair and free elections in Malaysia.

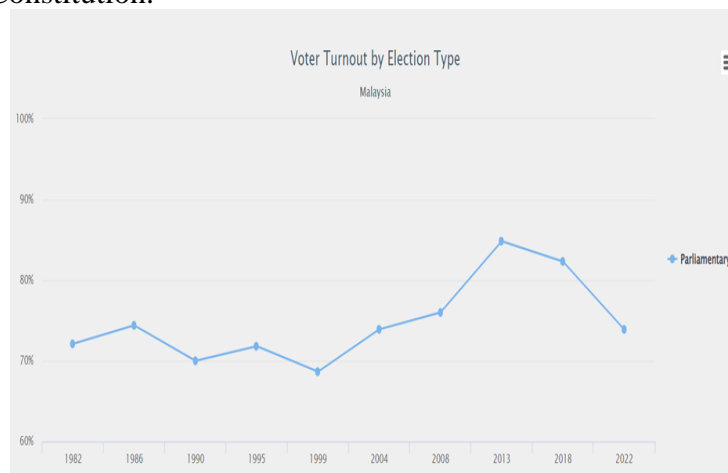
Presently, in accordance with the Elections (Conduct and Elections) Regulations 1981 and Article 55(4) of the Federal Constitution, general elections are held within 60 days after the parliament is dissolved, followed by a nomination day and a campaigning term before the polling day. Similar to the plurality rule or the 'first-past-the-post' voting system in Westminster, a strong government is required to preserve the plural society of the country and promote economic development (Hong Hai,2023:1). The winner of the election is the party that won the greatest number of seats, whereby at least 112 out of the 222 seats is required. Hence, the Malaysian electoral system is parallel to the British Parliamentary system by which electorates vote for their Member of Parliament of choice in their respective constituencies or the 'Dewan Rakyat'. The State adheres to similar principles and the State level legislature is addressed as the State Legislative Assembly.

b) Statistical Analysis on the Rate of Voters during GE14 and GE15

On a five-year once basis, the general election takes place to rationale a single individual among numerous candidates to determine the nation’s future, economy, standard of living and more for those who did and did not vote. Voting acts as the primary step in establishing one’s political presence in their respective state which truly gives justice to the statement – using our voices to shape the desirable and the best future.

Every vote counts – a short but loud statement strongly upheld in Malaysia. During the 14th General Election (GE14), it is observed that a relatively low voter turnout rate was recorded in several states including Malacca with 65%, Sarawak with 60% and Johor barely passed half with 54.92%. Such a low voter turnout could have been a result of disheartened voters due to the Sheraton Move that has shortened Pakatan Harapan reign.

In the most recent GE15, the Election Commission recorded that the final voter turnout reached a total of 73.89%, considering three parliamentary seats, including Padang Serai, Kota Marudu as well as Baram. However, no single party could successfully attain more than 50% of the 219 seats that were contested. The positive outcome of voter turnout in the 2022 elections could be seen from the increase to 21 million eligible voters after the age of a person eligible to vote is reduced to 18 as per Article 119(1)(a) of the Federal Constitution.



Graph (1): Malaysia’s Voter Turnout from GE6 to GE15

(Source: IDEA (International Idea Institute for Democracy and Electoral Assistant,2022))

Table (1): Malaysia’s Voter Turnout from GE6 to GE15

Parliamentary								
Year	Voter Turnout	Total vote	Registration	VAP Turnout	Voting age population	Population	Invalid votes	Compulsory voting
2022	73.89 %		21,173,638		24,650,080	33,871,431		No
2018	82.32 %	12,299,514	14,940,624	62.14 %	19,794,567	31,809,660	1.76 %	No
2013	84.84 %	11,257,147	13,268,002	62.95 %	17,883,697	29,628,392	1.30 %	No
2008	75.99 %	8,161,039	10,740,227	53.40 %	15,283,282	25,274,133	2.70 %	No
2004	73.90 %	7,209,948	9,756,097	52.24 %	13,802,493	23,092,940		No
1999	68.65 %	6,655,348	9,694,156	49.62 %	13,411,519	22,549,627	2.20 %	No
1995	71.80 %	6,470,882	9,012,370	63.60 %	10,175,010	19,951,000		No
1990	70.00 %	5,600,000	8,000,000	63.05 %	8,882,000	17,764,000		No
1986	74.39 %	5,052,157	6,791,446	64.00 %	7,893,900	16,110,000	2.50 %	No
1982	72.10 %	4,181,800	5,800,000	61.24 %	6,828,160	14,528,000		No
1978		3,473,790		57.25 %	6,067,230	12,303,000		No
1974		2,122,927		40.32 %	5,265,000	11,700,000		No

(Source: IDEA (International Idea Institute for Democracy and Electoral Assistant,2022))
 Nevertheless, despite such a right being expressly available in the Federal Constitution of Malaysia, it is a debatable matter if voting constitutes a right and a privilege. Hence, there is a thin line existing to establish whether voting is a right or is something the right people should do given that they have the liberty to do so. This paper determines whether voting is a right or a liberty vested upon the eligible citizen’s freedom. Therefore, the question here is, is the act of choosing to vote or to not vote, a matter of legality or morality?

2.Relationship Between the State and the People

Fundamentally, the State is the fiduciary of its people and subjects which also contributes to public and private law theories. This can be said to be an agency agreement between the State and the people. A State has the duty to protect, promote as well as to implement all available human rights and fundamental freedom by taking all necessary measures as to social, economic, political and others under its jurisdiction. Article 2 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms 1998 allow citizens to enjoy these rights and freedoms on a daily practice basis. As such, in terms of the electoral system, Malaysia has the duty to protect the rights of voting of those eligible, whereas the citizens have the duty to exercise their rights to vote for the party of their preference to form a government of good governance.

a) Constitutional Amendments and its Impact

By means of a bicameral unanimity comprising of 211 votes (surpassed the two-thirds majority) at the 'Dewan Rakyat' on the 16th of July 2019, the Constitution (Amendment) Bill 2019 was passed which lowered the legal voting age in Malaysia to 18 years old compared to the previous 21-year-old requirement (Annuar,2019:1). Based on Article 119(1)(a) of the Federal Constitution, the phrase 'twenty-one years' was replaced with 'eighteen years' for elections of the lower house of the Parliament and the State legislative assembly. Furthermore, as stipulated under Article 119(1)(b), automatic registration is permitted and conducted whereby the wordings 'is registered' has been replaced with 'applies for registration' as an elector in interpreting 'qualifying date' expressly stated in parts of the article. Through this constitutional amendment, upon attaining 18 years of age, a person would be automatically registered as a legal and eligible voter.

When this Bill was introduced, the former Prime Minister of Malaysia, Tun Dr Mahathir Mohamad suggested amendments required to be made to several regulations involving the elections, namely the Election Offences Act 1954, the Elections (Conduct of Elections) Regulations 1981 as well as the Elections (Registration of Electors) Regulations 2002 to automatically register an individual as a voter upon reaching the said age of majority. However, it must be noted that those who are of unsound mind, imprisoned or have been sentenced to imprisonment for more than twelve months or sentenced to death, are disqualified under Article 119(3) of the Federal Constitution from casting their votes.

However, the setback is, the automatic registration and Undi18 overall could potentially open floodgates for gerrymandering which could result in denial of equal representation as the proportion of urban voters had significantly increased compared to those of rural areas. Such circumstances would cause the Malaysian elections to be unfair (Nair,2022:1). By lowering the voting age, an estimation of 5.8 million new voters were added to a total of 21.02 million. As such, malapportionment has been formed and can be seen from the violation of fair election principles, lower inclination of voter turnout from under-represented constituencies and poorer welfare. This could eventually lead to low voter turnout in larger constituencies upon perceiving their votes to be less significant and given that politicians are provided with higher incentive to aid resources and attention in smaller rural constituencies. Subsequently, a negative long-term effect might be emerging regarding cynicism and fostering political apathy among the younger generations (Nair,2022:1).

b) The Paradox of Lowering the Voting Age: Does Age Define Maturity?

As of GE15, millions of young teenage voters who have passed the age of majority have been vested with the right and liberty to legally vote during the general elections through a guided democracy. The ages between 18 years to 21 years may be perceived as a gestation period for these young inexperienced voters to learn and be educated on basic politics and the way their voters would in fact choose their political future. However, the question that falls back into passing the amendment of Article 119 of the Federal Constitution is whether young voters are mature enough to choose for the betterment of the country.

When one attains the age of 18, they have officially attained the legal age of adulthood and can enter a contract. Despite the younger generation being tech savvy, this does not mean that they have attained maturity only since social media has massively influenced teenagers growing up. However, it must be noted that a large amount of news on social media is relatively fake for clout and may be misleading to the younger generation who heavily rely on it. In this stance, the young voters may result in following the bandwagon and voting based on the popularity of the candidate or could be easily influenced by the choice of others rather than making their own decisions based on adequate reading and understanding about Malaysian politics.

On the contrary, some politicians and young leaders insist on wanting the youth to have a say in Malaysia's future. They perceive this amendment to be a game changer in deciding the winning coalition given that new political parties and factions have emerged. However, the sole concern here is whether the so-called disenchantment due to the political old guard whereby the public have been tainted with corruption scandals would be a motivating factor for the youth or would negate their will to head out and cast their ballots. Based on Syed Saddiq Syed Abdul Rahman in an interview with TIME, he quoted that 'Malaysian youth are effective kingmakers.' (De Guzman,2022:1). He is known to be the youngest cabinet minister in Asia ever at the age of 25 and has garnered attention for his deep interest in politics since a young age.

Simply said, Undi18 is a mode of bringing youth empowerment to life as well as encouraging them to use their voices and speak up for the sake of their country. Despite a high voter turnout in the younger generation possibly causing malapportionment, an increase in voter turnout overall may prove the interest of the youth in politics and to make change. Some also are of the opinion that maturity is not an issue as millions of youths actively

engage in political-based activities in secondary and tertiary education such as Model United Nations (MUN) whereby students take on roles as delegates representing various countries by means of a simulation of the United Nations and strive to solve real world issues in regard to policies, perspectives and statements.

Regardless, maturity is reached at different paces in each individual. Thus, the question of whether attaining the age of majority simultaneously validates a teen's maturity depends on various circumstances such as the background of the youth and their surroundings. This is because, there may be a possibility whereby, the youth are unable to differentiate between their right, liberty and duty and subsequently cast votes as they please by disregarding the main motive of general elections, which is to elect a government that is beneficial to all people.

c) Voting as a Form of Freedom of Expression: The Right to Not Vote

Article 10(1)(a) of the Federal Constitution stipulates the right to freedom of speech and expression. This freedom of expression can be interpreted in a manner which gives eligible voters the right to choose their preferred party in general elections as voting can be included as a liberty of those who can rightfully vote. Nonetheless, it must be noted that voting is a duty but is not compulsory to those eligible. Hence, despite having a civic duty to vote in elections, certain communities opt into not voting given the quandaries that they face as well as the fact that they have the liberty to choose whether to fulfil their rights or not.

In asserting that the choice not to vote may constitute a liberty arising from a right provided, is such given that the right not to vote comprises a strong intuitive appeal which is in accordance with the fundamental understanding of a democratic practice that encompasses the belief that voting should not be a forced gesture. In linking both the right of voting and an individual's liberty, an individual voter imperfectly articulates that there is an association between the act of not voting and the existence of the right not to cast votes. Voting is not mandatory but is in fact a necessity. This is primarily because, when one chooses not to vote, their impact on matters pertaining national security, privacy rights, local policies and more is diminished (Liataud, 2020:1).

Regardless, choosing not to vote is not illegal and one who decides not to will not be subjected to any punishments. However, the choice to not vote under unreasonable circumstances, such as the perception that one's respective vote would not make a difference, laziness, tardiness and more, is

looked at as morally wrong and breaching the civic duty of citizens. Despite the past political mishaps and corruption, the younger generation are still expected to vote to make a difference as the lawmakers have legislated the amendment with the intention of the youth to share their part in making a good difference for the country.

3. Legality vs Morality: An Approach on Hampering Issues

Most citizens exhibit and believe in a moral obligation to cast their respective votes in contemporary democracy. They are obliged with the duty to vote despite being reasonably and rightly aware that the party of their choice stands little to no chance in winning (Schwitzgebel and Rust, 2010: 193-196). Some are of the perception that their duty to vote ends by casting a ballot compared to the duty to bona fide vote for a party that can change the nation for its betterment but some are of the perception that voting is a mere liberty which can be chosen to do or to not, given that there are no laws mandating those eligible to cast their votes. Some are of the view that both morality and legality coexist and rely on each other. Hence, the debate lies upon whether the duty to vote or to not vote is a matter of legality or affects the morale alone. In this context, the different classes of citizens must be analysed, especially those unfortunate and underprivileged to determine the balance between legality and morality in an individual's choice to cast their vote in a general election. Legality denotes the rights of citizens and the State that have been expressed in the law and rules whereas morality represents a body of principles that strive to differentiate good and bad conduct which is subjected to religion, culture, geographical value, experiences and personal value. Simply said, legality is standard and constant under a fixed body whereas morality varies per person. In Lord Devlin's paradigm, on public morality, "What constitutes society is the existence of shared values. The law must make it its business to protect these shared values and standards. But as far as possible privacy must be respected. Not every breach of public morality needs to be punished. Only such conduct that arouses widespread disapprobation, a mixture of intolerance, indignation, and disgust, needs to be suppressed by the instrument of law."

As such, the law can only control and punish so much as to not breach the privacy of individuals and relating this to the electoral system, it can be interpreted that despite voting being a right that is given in line with the duty to cast one's respective vote, the boundaries of privacy must also be adhered to so long as it does not severely affect the society in a negative manner. As

such, voting despite being placed as a right under the law, is a liberty that can be chosen to be done or to abstain from doing. Despite those failing to vote being perceived as immoral or feigning ignorance towards their duty as a citizen by fellow citizens, in the legal lens, the choice to not vote readily exists given that no one can be forced to vote, but merely encouraged to carry out their duty.

a) The Access of Political and Electoral Rights by Low Income Families

At the end of 2022, The World Bank estimated around 8.5% of the global's population live in poverty. In 2022, around 60% of Malaysian households expressed that they were completely or partially unable to sustain their monthly necessities. An estimation of 2.91 million were under the B40 category with income less than RM4850 a month (Carvalho and et al.,2022). As the B40 community are generally employed under low-income service jobs or are even informally self-employed, the issue on whether such individuals had the time to vote in their constituencies had indeed deterred participation in voting turnouts. However, given the GE15 providing a public holiday on the voting day itself, the issue here now reverts to whether such low-income families could afford travelling to their respective constituencies to cast their votes. This further extended to them perceiving that their vote made no difference and was meaningless to cause a change.

It is reported that around 1.4 million tertiary students faced difficulties in returning to their respective hometowns to vote due to financial constraints and must be given the same option of postal voting. Despite the 5-day leave to head back to vote, those who cannot afford high air fares or long-distance transportation opt into letting their votes go to save money. Generally, students are educated to fulfil their duties as citizens of Malaysia. However, the incapability to vote due to financial constraints, are somewhat seemed to be an excuse by some, suggesting that their civic duty has been breached and the younger generation has failed to carry out their moral and civil obligation towards their nation. Thus, barriers that are identified in such low-income families consist of financial and time constraints which are condoned to be morally wrong to use as an excuse to not vote. Regardless, the grass is always greener on the other side.

b) The Access of Politics by the Indigenous People

In Malaysia, the indigenous community consist of many ethnics, such as the Negritos and the Senoi. Many sub-ethnic have embraced well with the local community and take part in the economic activity. For instance, the Batek, a sub-ethnic of the Negritos, have been working together with the locals to

promote ecotourism in the National Park of Malaysia (Khalid and et al, 2013: 394-395). On average, the indigenous community represents 14% of the total population but only 0.7% lives in the Peninsular Malaysia. Their vote mattered and normally made a difference by tipping the balance against the incumbent ruling party, the indigenous community were ever willing to exercise their rights to vote (Bersih 2.0,2020).

In areas where the Orang Asli represent the smallest minorities, they choose not to vote given the assumption that their vote would not suffice to make a difference. The highest but unfortunately, non-binding resolution regarding the highest international agreement would be the United Nations Declaration on the Rights of the Indigenous Peoples 2007 (UNDRIP). Based on Article 5 of UNDRIP, the indigenous people have a right to participate in economic, political, social and cultural life. Globally, there is a notable low voter turnout as to the indigenous communities such as in Canada who only identified them as voters from 1960 and in 2014 (to make stricter laws on identification) which was only fully extended in 1962 (Australian Electoral Commission,2019).

As stipulated in Article 8(5) of the Federal Constitution, equality prevails in aspects of protection, well-being, advancement and a reasonable proportion of relevant positions in the public service as to aborigines. Furthermore, based on Article 8(2), the YDPA is vested with the discretionary power to appoint individuals who represent a minority and can represent aborigines to protect their interests. Similarly, Item 16 of the Federal list in the Ninth Schedule the welfare of the aboriginal people is protected whereas The Aboriginal People Act 1954 protects all matters to do with over 67 indigenous ethnic groups except regarding their political participation.

However, low voting rates from this community can be observed and justified as to physical and institutional barriers whereby transport accessibility was an issue to those in deep urban areas as the Department of Orang Asli Development does not make such arrangements. Some of the Orang Asli communities are away from certain political tactics whereby politicians cater more to their needs during the election, especially when they hail from a significant voting bloc to their detriment as their votes would or could possibly help a certain party to win in its constituency but stopped visiting them once attained victory. The perspective of many was that their vote made no difference while some were unaware of their role and rights as registered voters. Some even feared that political involvement would divide their villages (Bersih 2.0,2020).

Given these predicaments, the Orang Asli communities are split between those who are aware of their rights, those who turn those rights into liberties by choosing not to vote or remaining indifferent to ongoing elections and those who are unaware or unable to cast their votes. Hence, in balancing between legality and morality, these communities perceive that despite it being their legal duty to vote, their living conditions and their struggles validates their non-participation in elections to be morally and legally permissible. However, the public may perceive such a behaviour to be immoral as morality differs in each person.

c)The Access of Political Rights and Elections Regarding those with Disabilities.

An estimation of 1.3 billion or 16% of the global population suffer from significant disabilities as of the end of the year 2022 while in Malaysia, based on the National Health and Morbidity Survey 2019, around 1 to 4 adults or 11.1% experience functional disabilities with another 4.17% of disabled individuals being children (Anon,2020). Based on Article 119(1) of the Federal Constitution, all Malaysian citizens of 18 years of age, are registered voters, Article 119(3) however, states that those of unsound mind are not eligible to vote which could be a psychological barrier to those who are capable of voting but are branded as disabled or worst, unsound.

History records representation of those with disabilities involved in politics through the appointment of Professor Datuk Dr Ismail Salleh as Malaysia's Senate from 2007 to 2009 who was blind, followed by Ms Bathmavathi Krishnan till 2019 (Bersih 2.0,2020). However, the lack of representation of disabled people to stand as candidates, negates their will to vote to some extent. On the contrary, although certain improvements being made by the Election Commission by allowing a family member or a trusted individual to accompany those with disabilities when voting as well as providing personnel to aid and assist them at the polling stations while ensuring the secrecy of their votes, an array of concerns have emerged as to those disabled who do not vote due to the liberty under the law but are perceived to be morally wrong towards their country by abstaining from carrying out their civic duty.

Reports and complaints from the disabled community suggest that their non-participation to some extent may be due to the lack of facilities – access ramps, disability-friendly toilets, narrow lanes, non-friendly locations on hills, or drains at polling stations (Bersih 2.0,2020). Even prior to the polling dates, those with impaired hearing or are deaf address communication

barriers whereby very little to no information was accessible given that only the television station (TV2) provided sign language interpreters to further elaborate on the general elections.

Thus, only those disabled with accessible facilities or available assistance may truly vote without facing difficulties which leaves the rest torn with the decision to not vote. Yet, their decision is still questioned to have breached the civic duty of choosing not to vote. The question on whether the choice to not vote or the situation where one cannot afford to vote falls under the ambit of breaching legality or morality as to fulfilling one's civic duty is yet unclear as everyone has their own basis of making such a choice. However, we can notice that both morality and legality coincide whereby the law does not make it mandatory for all eligible voters to vote nor penalise those who fail to do so. Based on Samuel Benjamin Harris on morality: "Should we strive for two pictures, one of what law is, another of what law ought to be? Or do we want one picture only, in which moral colours can be shaded in?" Hence, to some extent, given that the law is structured based on the general standards of morality. In determining whether an act or abstain is moral or legal, the matrices must be analysed to allow justice to all people and improve the existing laws based on the lack of ability to carry out a duty, a right and a liberty.

4. Rights and Liberties

Rawls (1999) in his book, *A Theory of Justice*, emphasised that:

"Non-voting per se expresses nothing at all. The constitutional process must rely, to a large degree, on some form of voting a variant of majority rule suitably circumscribed is a practical necessity".

The rising emphasis on individual rights ideas throughout the 20th century confirmed the emergence of voting as a fundamental right. Almost in every democratic country, it is a common component of constitutional texts and international human rights treaties, and it is safeguarded by associated legislation and by courts with the authority to investigate suspected rights violations (Lardy,2004:303-305). Scholars and judges frequently point out that some democratic country's Constitution states "Everyone has the right to vote." but some of the countries have waived any limitations on that right (Epps,2012). For instance, the American Constitution contains no explicit right to vote, while the voting-rights activists have failed in their pursuit to request new amendment to the American Constitution.

The Constitution leaves the majority of ballot decisions to state and federal legislators, stating that “times, places, and manner” of elections are state affairs unless Congress establishes national standards (Wines,2022). However, there are contradictory views from Professor Richard Hasen (2001) that the courts do not always treat the right to vote as a fundamental right. Christopher Elmendorf (2007) is of the view that the presumption of constitutionality on the right to vote may be overturned if an examination of the statute finds ‘anything alarming.’ The court will then examine the tailoring of the statute and the stated justifications for it (Douglas,2008:142-145). This has shown that different understandings led to several arguments that a right that is not guaranteed in affirmative terms is not a “right” in the fundamental sense.

From a jurisprudential perspective, natural rights such as life and liberty existed naturally and could never be relinquish by anybody. If a sovereign violated these rights, the social compact would be shattered, and the people would have the right to revolt and form a new government. Under Malaysia’s context, the His Majesty the King is the symbol of sovereignty but the ones managing the country are the government elected through general elections. Locke’s theory perfectly suits the discussion on the right to vote where such right limits the one in power under a social contract between the people. Locke’s theory was agreed by Jean-Jacques Rousseau where he believed in a direct democracy in which every citizen casts a vote to express the general will and determine the rules of the state. This demonstrates that the right to vote is valued from a jurisprudential perspective.

Central to the concept of the right to vote is attributing democratic authority to electors as competent participants. The right to vote is crucial for a nation as it is a foundation virtue of democracy which affirms that a group of citizens elects its representative and govern themselves by free choice (Douglas,2013:83-86). From the peoples’ perspective, the majority of Americans, according to a Pew Research Center survey, believe that all citizens has a fundamental and unqualified right to vote (Vianney and Carroll,2021:1). However, some believe that it is a privilege with obligations and can be restricted in certain circumstances. In addition, voting rights pertain to fundamental rights, political rights, social rights, economic rights, and financial rights. It is also in relation with a person’s political involvement and the right to choose the government he wishes to be governed of. In such a condition, interference with or denial of the vote shall only be considered wrong if it is deemed unjust under the

circumstances to deny the individual in question democratic authority (Lardy,2004:305-305). This clearly demonstrates the significance of the right to mark a ballot as the mark of distinction of citizens of a democracy. Nevertheless, the later concern leads to another discourse whether the right to vote extends to the right not to vote.

The subject of the right not to vote has always been prevalent when addressing mandatory voting and low voter turnout. The idea not to vote is mainly based on the arguments on preserving individual liberty and maintaining a preferred democratic practice. The claim of the freedom not to vote falls under the negative liberty, which emphasizes the utmost significance of preventing governmental interference in the lives and decisions of individuals. Some political scientists argue that compulsory voting not only has no influence on the quality of democracy and its inclusiveness, but that it also undermines the ‘right not to vote’ and, by extension, one of the most fundamental liberties afforded by democracy (Lever,2009). There are also ideas that the right to vote is an expression of a conception of liberty requiring the active engagement of electors. In their opinion, voting is an act of pure expression because it is a consequential expressive act in an individual's life, when his voice becomes an action and those acts determine how the people are governed (Anon,2020:1). Hence, it might be argued that the right not to vote is a form of freedom of expression, since non-voting is an expressive act that conveys the non-voter dissatisfaction with or estrangement from the election process.

The right to vote or not to vote is not protected under the freedom of expression as freedom of thought does not extend to protect all expressions of thoughts. In any case the voter in question is free to express his or her dissatisfaction with electoral democracy by other means, but it does not give his or her the right to demand protection from punishment for not voting. Participation in an election necessitates the suppression of complex interests, perspectives, and ambitions in order to conform to a sort of tribe; the voter is subsumed within a faceless collective by the very nature of the process (Lardy,2004:305-305). Undeniably, a right to vote is emphasized in each democratic country both explicitly and implicitly. However, it is apparent that this does not include the freedom to abstain from voting as each citizen has a civic duty to vote and only can be excused from voting in extenuating circumstances.

5. Conclusion and Recommendation

Based on the research and theories, it is evident that the right to vote is a crucial component of the overall democratic framework. This is because votes change the quality, kind and scope of the government and at the same time indicate whether or not individuals become racist, sexist, or subject to homophobic legislation under poor governance. The question then goes to: Why is the right to vote not included expressly in any of the constitutions in democratic countries, especially both the Malaysian Constitution and the American Constitution? The reason for not incorporating the right to vote in the written constitution is to prevent any violations of the right to vote. For instance, Bolivia, a country in Latin America, has had a policy of mandatory voting since 1952, requiring all citizens to cast a ballot. Non-voters who cannot present documentation of voting within three months after an election can be fined and refused pay (Liao,2020:1).

There are circumstances for certain groups of people such as low-income families, indigenous people as well as people with disabilities, which they were restricted to cast their votes. People will only be burdened by the enforcement of the right to vote. Instead, voting is a duty of every citizen in the social contract. The obligation of a single ballot is to promote common good to the society. There is no moral objection to mandate the people's participation in maintaining a democratic system. Although voting is not compulsory in Malaysia, voters must understand lower voter participation will challenge the credibility of the electoral system and the legality of the new government. Considering the present political climate in Malaysia, here are a few suggestions to boost voter turnout.

- I. For low-income families, enacting and implementing stricter guidelines regarding the amount of time service staff must vote would be a good starting step. To allow this social group to vote, it is essential to reduce the cost and time burdens of returning to one's district by a monetary stipend or by holding elections on weekends. Better implementation of anti-bribery and treating measures, will aid in lowering low-income groups' perceptions of vote buying.
- II. For the indigenous people, the Election Commission and education authorities must address the concerns of Orang Asli indifference towards political involvement, particularly the 18 years old, through motivational civic education initiatives. The focus group discussion reveals that Orang Asli political education and awareness must be expanded. JAKOA and the Elections Commission must collaborate to expand the number of training and awareness campaigns. The early

findings suggest higher representation of Orang Asli at the state level that handles land matters, which is likely to be the issue of greatest political significance to Orang Asli.

- III. For persons with disabilities, the government of Malaysia must review and ensure inclusivity in the Persons with Disabilities Act 2008. The Election Commission must enhance the selection of accessible polling facilities and voting procedures. The Election Commission must also provide training on persons with disabilities and basic sign language to all personnel involved in the voting process. To ensure that those with hearing or visual impairments or learning disabilities have equitable access to electoral and political information, it is necessary to provide targeted materials in accessible formats.

In essence, the magnitude of the right to vote must be reconsidered by the government, especially Malaysia as voting is a sacred act done discreetly with the obligation as a part of the nation for the people themselves. Everyone should respect every vote and every right to vote, and the government should not interfere with this fundamental freedom to elect ones' representatives and express ones' opinion through voting.

Thomas Hobbes, an English philosopher contended that by an establishment of a government which provides effective authority and protection upon its citizens, an individual's physical survival which is initially at stake in a constant manner can be healed and protected in its interests. Thus, on this notion, as to legitimacy of a government, Hobbes emphasised on the significance of a legitimate government which would be otherwise focused on dictatorship. John Locke on the other hand suggested a comprehensive interpretation of legitimacy whereby the King's right to rule was criticised by which he proposed that the true function of a good government is to protect every citizen's natural right and rule in line with the citizens' consent.

A state and its citizens have a fiduciary relationship by which the citizens have the upper hand to legally choose their government, the available right to vote under the Federal Constitution in Malaysia would only be meaningless if the said right is disregarded by not completing this civic duty to vote. It is evident that the law does not criminalise nor punish its citizens from the abstaining of voting during elections. However, it is relatively immoral not only as an abstain itself but also towards the public by choosing not to vote with the mindset that a single vote will not suffice to make a difference. Although certain communities face difficulties in reaching the

poll stations to exercise their right to vote, it must be noted that the respective departments, including the Election Commission has taken such issues into consideration and have extended their facilities to aid the needy and to allow them to have a chance to vote despite requiring adequate improvement in the core of its system.

As the government, the duty to protect its subjects in all relevant aspects is mandatory; as a citizen, the duty to exercise the right to vote despite having the liberty not to is highly encouraged as we are given a chance to choose those who will oversee our welfare. Hence, the liberty is in the hands of the citizens on whether to fulfil their available rights and to cast the vote. Thereafter, they will be empowered when they see the impact of their votes when different government rule the country. They will later learn on how they can play their part in the decision-making process, to report any wrongdoing and to uphold other human rights (Alsaadi et al., 2020, 38-39). This is particularly pertinent when everyone is gearing towards full recovery after the Covid-19 pandemic (Bagheri and et al,2021:124-125) and in the light of inflation due to the ongoing Russia-Ukraine conflict (Hafeznia, 2022:1-24).

References

1. Alsaadi, S. A.; Md Khalid, R.; Wan Dahalan, W. S. A. (2020). Revisiting the human right to water in contemporary international law. *UUM Journal of Legal Studies*, 11(1), 37-49. <https://doi.org/10.32890/uumjls.11.1.2020.6860>
2. Annuar, A. (2019). History made as Undi 18 Bill passed with bipartisan support. *Malay Mail*. Retrieved July 16, 2019 from <https://www.malaymail.com/news/malaysia/2019/07/16/history-created-as-undi-18-billpassed-with-bipartisan-support/1771996>.
3. Australian Electoral Commission. (2019). Electoral milestones bibliography & references 25 inclusive electoral reforms in Malaysia 4 D for Indigenous Australians. Retrieved December 18, 2019 from <https://www.aec.gov.au/indigenous/milestones.htm>
4. Anon. (2020). Disability data- 2018 be counted to count. Retrieved January 1, 2023 from <https://www.okurightsmatter.com/disabilitydata#:~:text=11.1%25%20Malaysians%20above%2018%20years,%2C%20self%2Dcare%20and%20communicating.>
5. Bersih (2020). Inclusive electoral reform in malaysia. Retrieved January 1, 2023 from <https://jci.edu.my/wp-content/uploads/2020/03/WEB-QUALITY-Inclusive-Electoral-Reforms-in-Malaysia-02012020.pdf>, p 11.
6. Bagheri, P; Althabhwawi, N.M. & Moslemzadeh, P. (2021). Legal issues tsunami in the wake of covid -19 and contractual breach. *Geopolitics Quarterly*. 17, 123-135. Special Issue.
7. Campbell, A.; Gurin, G.; Miller, W.E (1954). *The voter decides*, Evanston. Ill: row. Peterson, and Co.
8. Christopher, S. E (2007). Structuring judicial review of electoral mechanics: explanations and opportunities. *University of Pennsylvania Law Review*, Vol. 156, 313 Retrieved January 1, 2023 https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1219&context=penn_law_review.
9. Carvalho, et al. (2022). Review of Malaysian income groups to be carried out, says Tok Pa Retrieved January 1, 2023 from <https://www.thestar.com.my/news/nation/2022/10/03/review-of-malaysian-income-groups-to-be-carried-out-says-tok-pa>.
10. Constitutional Rights Foundation. (2004). Bill of rights in action hobbes, locke, montesquieu, and rousseau on government. Retrieved January 3, 2023 from <https://www.crf-usa.org/bill-of-rights-in-action/bria-20-2-c-hobbes-locke-montesquieu-and-rousseau-on-government.html>.
11. Douglas, J.A. (2008). Is the right to vote really fundamental. *Cornell Journal of Law and Public Policy*, Volume 18, Issue 1 Fall. Retrieved January 1, 2023 <https://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1282&context=cjlp>.

12. Douglas, J.A. (2013). The foundation importance of participation: a response to professor flanders. University of Kentucky Law Faculty Scholarly Articles, pp. 31. Retrieved January 3, 2023 from https://uknowledge.uky.edu/cgi/viewcontent.cgi?article=1297&context=law_facpub.
13. De Guzman, C. (2022). Syed Saddiq Wants Young People to Have a Say in Malaysia's Future. Retrieved January 1, 2023 from <https://time.com/6221663/syed-saddiq-malaysia-youth-vote/>
14. Hafeznia, M.R. (2022). Scenarios for the future of the world in light of the Ukraine crisis. *Geopolitics Quarterly*. 18. 1-24.
15. Hong Hai, L. (2023). Electoral Politics in Malaysia: 'Managing' Elections in a Plural Society. Retrieved January 1, 2023 from <https://library.fes.de/pdf-files/iez/01361005.pdf>.
16. John Locke (1993). *Two treatises of government*. Phoenix. London England.
17. Liao, K. (2020). What voting rights look like in 6 countries around the world. *Global Citizen* Retrieved January 1, 2023 from <https://www.globalcitizen.org/en/content/voting-rights-around-the-world/>
18. Lardy, H. (2004) Is There a Right Not to Vote?' *Oxford Journal of Legal Studies*, vol. 24, no. 2, pp. 303.
19. Lever, A. (2009). Is compulsory voting justified?' the london school of economics and political science. *Public Reason* 1 (1): 57-74. Retrieved January 3, 2023 from https://eprints.lse.ac.uk/23100/1/Is_Compulsory_Voting_Justified_%28publishers%29.pdf (3 Jan 2023).
20. Lopez, G. (2022). Explainer: Malaysia's Electoral System. Retrieved December 15, 2022 from <https://newnaratif.com/explainer-malysias-electoral-system/>.
21. Liautaud, S. (2020). What you're saying if you choose not to vote, CNN opinion. Retrieved January 1, 2023 from <https://edition.cnn.com/2020/10/26/opinions/voting-ethical-choice-liautaud/index.html>.
22. Md Khalid R.; Sulaiman, S.S.; Bakar, N.A.; Rahman, S.A. (2013). Revisiting legal framework for sustainable tourism in Taman Negara Malaysia. *Research Journal of Applied Sciences* 8(8), 393–397.
23. Md Khalid, R. (2021). Subsidiarity for Sustainability: Historical Development and Application in the European Union and in Federal Legal Systems. In Mauerhofer, V. *The Role of Law in Governing Sustainability*. (1st Edition pp. 68-80). London: Routledge.
24. Md Khalid, R.; Jalil, F. (2018). Theories of federal-state relationship. *Journal of Law and Society. Special Issue*. 115-127.
25. Michael Wines. (2022). Does the constitution guarantee a right to vote? the answer may surprise you. *The New York Times* Retrieved January 1, 2023 from <https://www.nytimes.com/article/voting-rights-constitution.html>.
26. Nair, T. (2022). Undi18, automatic registration could lead to unfair polls. Retrieved January 1, 2023 from <https://www.freemalaysiatoday.com/category/nation/2022/11/03/undi18-automatic-registration-could-lead-to-unfair-polls/>.

27. Richard, L. H. (2001). Bush v. Gore and the future of equal protection law in elections. *Florida State University Law Review*, Volume 29, Article 3. Retrieved January 1, 2023 from [https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1603 & context=lr](https://ir.law.fsu.edu/cgi/viewcontent.cgi?article=1603&context=lr).
28. Schwitzgebel, E.; Rust, J (2010). Do ethicists and political philosophers vote more often than other professors? *Review of Philosophy and Psychology*. 1: 189–199.
29. Vianney, G; Carroll D. (2021). Wide partisan divide on whether voting is a fundamental right or a privilege with responsibilities. Pew Research Center. Retrieved January 1, 2023 from <https://www.pewresearch.org/fact-tank/2021/07/22/wide-partisan-divide-on-whether-voting-is-a-fundamental-right-or-a-privilege-with-responsibilities>.