

# Right to Food Information and Food Choice from the Perspective of Fundamental Liberties

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## ABSTRACT

### ARTICLE HISTORY

Received:  
24 April 2022  
Accepted:  
28 July 2022  
Published:  
30 September 2022

### KEYWORDS

Food information  
Food choice  
Fundamental liberties  
Federal Constitution  
Consumer rights

*The Federal Constitution is silent on protecting consumers' right to food information and choice. The food label is a source of information and a tool to assist consumers in making food choices. In certain situations, information available on the product's label is limited, restraining consumers from making well-inform food choices, especially concerning credence food products derived from emerging technology such as nanotechnology. Such food is also associated with potential safety and health risks. This paper aims to explore the right to food information and choice from the perspective of the fundamental liberties embodied in the Federal Constitutions, i.e., the right to life and freedom of speech and expression. It adopts a doctrinal approach and content analysis by examining relevant literature on consumer rights to food information, food choice, and fundamental liberties. The finding from this paper indicates that the right to food information and food choice is implicitly part of fundamental liberties in the Federal Constitution. Food choice is associated with consumers' quality of life and their expression of religious beliefs, personal values, and identity. Therefore, consumers must be given the right to be directly involved in labelling issues, i.e., to demand necessary information, which is pivotal to food choices. Reference is made to the legal position under the Universal Declaration of Human Rights (UDHR), Constitution of India and the European Union. This article is intended for the food safety authority and the public because, to date, awareness of constitutional rights in Malaysia's food information law and food labelling is still absent.*

e-ISSN 2600-7274

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## 1. INTRODUCTION

The Federal Constitution is silent on the protection of consumers' right to food information to enable food choice. Nowadays, food information is one of the fundamental aspects of life for modern consumers as the structure and composition of food is more complex. The use of novel substances such as genetically modified organisms (GMOs) or engineered nanomaterials (ENMs) in food products entails safety and health concerns among consumers (Xavier et al., 2021). The Food Agriculture Organization (2010) also expressed concern over the potential safety and health implications of ENMs in consumer food products, and food products must be disclosed to consumers to ensure adequacy and transparency of information to enable consumers to make informed choices. Due to the integration of potentially harmful technologies and novel substances, consumers are increasingly interested in choosing safe food or food representing their values and beliefs (Wisemen, 2014).

Right to food choice can only be exercised if the information about the food is adequately available. Labelling food products is the primary source of information and tools for consumers to make food choices. In certain situations, the information available on a food label is inadequate for consumers to exercise their informed decision and choose food products that represent their beliefs, values, and identity. The inadequacy arises because the information disclosed is, at times, inconsistent with the needs and concerns of the consumers. Also, the available information is only limited to the labelling requirement mandated by the government and voluntarily disclosed by manufacturers. For voluntary disclosure, manufacturers prefer to disclose information that can accentuate the commercial value of their products, such as eco-label, country of origin, organic label, production method, suitable for vegans, gluten-free or serving suggestions. However, manufacturers are reluctant and avoid disclosing information that can negatively affect their products (Vidar, 2010). For instance, the FAO expressed their concern over the unwillingness of food manufacturers to disclose the presence of ENMs in their food products due to safety and health concerns (Food Agriculture Organization, 2010). The refusal to disclose the potential safety and health risks could negatively affect the interest of consumers.

In addition to being adequate, food information must also be accurate. For instance, if the food additives are the size of a nanometer, consumers should be informed that the scale of materials is not in conventional bulk that is commonly found in food products. Nanosized materials have been scientifically proven to be more harmful to human safety and health than conventional-sized materials (Al-Bayati & Al-Zubaidi, 2018). Adequate and accurate information about the food product enables consumers to exercise their rights for informed choices by distinguishing between healthy or harmful food (Beekman, 2008). It also protects consumers from being victims of unethical practices and takes necessary early prevention against the risks (Samsudin et al., 2020).

For instance, consumers in the European Union urge their government to introduce mandatory labelling for nanofood to enable consumers to make informed choices because they are concerned about the health status of ENMs in food matrices (Brown & Kuzma, 2013). Later, the European Commission conducted an online public consultation for its Strategic Nanotechnology Action Plan 2010-2015. The result from the consultation shows that 90% of the respondents demand adequate information through labelling of nano-content for consumer products (European Commission, 2012). In January 2018, the mandatory labelling requirement in Regulation 1169/2005 on food information to consumers was enforced throughout the European Union (European Commission, n.d.). The approach adopted by the European Commission and the European Parliament reflects the importance of consumer involvement in

policy relating to food information. It also signifies that the information must be consistent with those of most concern to the consumer. The absence of information is a barrier for consumers to decide on their purchases because food labels influence consumers' purchasing intention and purchasing behaviour (Zul Ariff Abdul Latif, 2013). Therefore, the consumer should be given the right to participate in food labelling decisions, i.e., to request food information not mandated by the legislation or not provided by the manufacturers.

This article does not attempt to establish the right to food information as a fundamental liberty that the Federal Constitution must protect. However, it is to measure the right to food information against the provisions of the fundamental liberties embodied in the Federal Constitution. The discussion is particularly important for the food safety authority and the public as awareness of constitutional rights in Malaysia's food information law is virtually absent. This article also explores the potential arguments favouring consumers' right to demand food information when the government does not mandatorily prescribe it, or manufacturers refuse to disclose it. The right to food information and food choice is discussed from the perspective of Article 5(1) on the right to life and Article 10(1)(a) on the right to freedom of speech and expression. The finding of this article is essential because food information significantly affects consumers' lives. It will influence consumers' choices regarding safety and health issues and are extended to ethical, value, and religious considerations (Berg, 2013).

This article is divided into four parts. The first part is the research methodology, and the second part analyses the right to food information stipulated under the legislation in Malaysia. The following part analyses the legal position on the right to food information under the Universal Declaration of Human Rights (UDHR) in India and the European Union. The last part analyses the consumers' right to food information under the right to life and liberty and the right to freedom of speech and expression in the Federal Constitution. This article ends with a conclusion.

## **2. METHODOLOGY**

This paper is qualitative doctrinal legal research that analyses the relevant literature from online and offline. Online journal articles and decided cases are searched by using a systemic search on Scopus, Web of Science, and Google Scholar. Meanwhile, most of the offline materials are books and domestic statutes, namely the Federal Constitution, Food Act 1985 (Act 281), Trade Description Act 2011 (Act 730), Consumer Protection Act 1999 (Act 599), and Federal Agricultural Marketing Authority Act 1965 (Act 141). The research approach adopted by this paper is descriptive-analytical. The descriptive approach describes the state of affairs on the right to food information and food choice under the food labelling and consumers protection legislation in Malaysia, the UDHR, the Constitution of India, the Treaty on the Functioning of the European Union (TFEU), the European Union Charter of Fundamental Rights (CFR) and the Federal Constitution. The analytical approach is adopted to evaluate the manifestation of the right to food information and food choice in the UDHR, Constitution of India, TFEU, CFR, and the Federal Constitution. Statutes and cases are analysed using a statutory interpretation approach, while other literature is analysed based on content analysis without using a software.

## **3. DISCUSSION**

### ***3.1 Right to Food Information and Legislation in Malaysia***

United Nations Conference on Trade and Development (2016) stated that the right for information to enable informed choices refers to the right against fraudulent, deceitful, or

grossly misleading information, advertising, labelling, or other practices and to be given the facts that one needs to make an informed decision. Meanwhile, informed decision refers to the decision based on information obtained by consumers, and enables consumers to evaluate, judge, and decide on products according to the values, beliefs, and preferences they find relevant (Hartwell et al., 2019). For instance, if a consumer chooses to have a healthy lifestyle, they will avoid foods that can deteriorate their health, and the information on the label will assist them in making healthy food choices. Without accurate and adequate information, it would be difficult for consumers to perform the intended behaviour and make the right choice, particularly when it involves highly processed food products or food credence.

The right to information to enable informed choices is one of the consumer's rights that has been universally recognised and stipulated as an inherent right of a consumer by the United Nations Guideline on Consumer Protection 1985 (UNGCP). In April 1985, at the 106th plenary meeting, the United Nations, through the General Assembly Resolution (A/RES/39/248), adopted the UNGCP (United Nations General Assembly, 1985). The UNGCP is a document that sets out the recommendation for effective consumer protection law for the members of the United Nations. The UNGCP is silent on the scope or type of information that the consumer is entitled to obtain. Still, the document specifies that access to adequate information covers information about goods and services (United Nations Conference on Trade and Development, 2016). Arguably, it shall include the right to food information. The UNGCP is a guideline that provides recommendations on the rights and protections of consumers, which has no binding effect upon the member states. However, some countries such as Australia, South Korea, and Malaysia recognise that the UNGCP provides international minimum standards for consumer rights (Deutch, 1994). Therefore, it is strongly indicated that the protection of consumer rights to information and enabled informed choices is part of the consumer protection law.

### ***3.1.1 Legislation on right to food information in Malaysia***

In Malaysia, every consumer is granted the right to information as recommended by the UNGCP, protected under four legislations. First is the Food Act 1985 (Act 281) and Food Regulations 1985. Part IV of the Food Regulations 1985 prescribed the mandatory labelling requirements for food products. There are currently four types of mandatory information stipulated under Part IV: *halal* mark (Zul Ariff Abdul Latif, 2013), expiry date, nutritional labelling, and ingredient labelling. Section 15 of the Food Act 1985 mandates that any person responsible for preparing, packaging, labelling, or advertising food products must comply with the standard prescribed by the law. Failure to adhere to the labelling standard prescribed by the law amounts to an offence and shall be punishable by imprisonment, fine, or both. Additionally, every information on its character, nature, value, substance, quality, composition, merit or safety, strength, purity, weight, origin, age, or proportion stipulated on the food label must be accurate and not misleading. Manufacturers that provide consumers with any false information are committing an offence of false labelling under section 16 of the Food Act 1983 and punishable with imprisonment, fine, or both.

Second, the right to food information is also protected under the Federal Agricultural Marketing Authority (Grading, Packaging, and Labelling of Agricultural Produce) Regulations 2008. It is the subsidiary legislation of the Federal Agricultural Marketing Authority Act 1965 (Act 141). The labelling information is only limited to agricultural produce, such as fruits and vegetables. The mandatory information that must be on the package of agricultural produce includes, among others, the name of the importer, exporter, producer or distributor, the address or place of business, name of the product, the information on the product's quality, i.e., grade and size,

country of origin, and weight. Any agricultural produce that fails to comply with the labelling requirement is prohibited from being exported to other countries or imported into Malaysia.

Third, the Trade Description Act 2011 (Act 730) prohibits any false trade descriptions or misleading statements for goods. Food products are categorised as goods, i.e., a movable property stipulated under section 2. Section 6(1) of the Trade Description Act 2011 defines trade description as an indication of nature, method of manufacture, and composition.

Fourth is the Consumer Protection Act 1999 (Act 599). The Act protects consumers inter alia against false and misleading representations of goods. Section 10 (1) of the Consumer Protection Act 1999 interprets misleading or deceptive representations as nature, manufacturing process, characteristics, and purpose. The provisions on protecting consumers against inaccurate descriptions and misleading representation under both legislations are intended to protect consumers' right to accurate information and enable informed choices. The provisions on food labelling requirements and labelling prescriptions in four legislations help consumers make well-informed choices before purchasing food products. It emphasises the adequacy and accuracy of food information, where food manufacturers must comply with the labelling requirements, and the description on the food label must be accurate.

However, this article contended that the labelling requirements under the Food Regulations 1985 and Federal Agricultural Marketing Authority (Grading, Packaging, and Labelling of Agricultural Produce) Regulations 2008 are not comprehensive. Certain aspects of food information are not explicitly prescribed as mandatory labelling requirements. Again, the absence of nanotechnology labelling provision is used as an example. The labelling legislation never mandates the food manufacturers to disclose the scale of materials, either nanoscale or otherwise. From this point, these legislations cannot assist consumers in making well-informed choices. Likewise, the provisions on a false and misleading description in the Trade Description Act 2011 and Consumer Protection Act 1999 are also unable to assist consumers in making informed choices if manufacturers choose not to disclose information that is not required by the law.

### ***3.2. Right to Food Information as Fundamental Liberties***

Before analysing the status of the right to food information in the Federal Constitution, this article analyses the status of food information under the document that embodies the core human rights values for all human beings in modern society, i.e., the UDHR. Due to the absence of decided cases and lack of discussions on the right to food information from the constitutional perspective in Malaysia, this article refers to the current legal position in India and the European Union.

The legal position in India is chosen because the Federal Constitution of Malaysia owes much to the Indian Constitution. Many of the provisions in the Federal Constitution are based on their Indian equivalents (Harding, 1996). The Constitution of India has a similar provision on fundamental liberty to the Federal Constitution, particularly the right to freedom of speech and expression (Haidar Dziauddin, 2005). Meanwhile, the reference to the European Union is relevant because the Treaty on the Functioning of the European Union (TFEU), i.e., the consolidated constitution for the European Union, contains a specific provision on consumers' right to information.

### ***3.2.1 The right to food information in the universal declaration of human rights***

In 1948, the United Nations General Assembly adopted the UDHR, which sets up the agreed framework for the international human rights law that must be adhered to by the members of the United Nations (United Nations, n.d.). The UDHR does not have an expressed consumer rights or protection provision. Therefore, consumer rights are not classified as a universal human rights law. However, the UDHR recognises that the individual right to information is connected to consumers' right to food choices. Article 19 UDHR states that everyone has the right to freedom of opinion and expression, including the freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of the frontier.

This article argues that the terms 'everyone has the right' can be interpreted as an individual consumer's right to receive and convey information. The term information can be widely interpreted to include consumers' right to information on food products. In this perspective, consumers' right to information is considered part of the international human rights law, which is implicitly embodied in Article 25 of UDHR. In this context, the human rights law can leave a mark on the food labelling law in general, where the labelling mechanism is adopted to impart information about the presence of ENMs to the consumers to allow them to choose the right food to consume.

Consumer rights are known as the third generation of human rights (Deutch, 1994). However, numerous organisations under the United Nations and international treaties have progressively accepted the unrecognised rights, which indicates the universal acceptance of consumers' rights as part of human rights. The protection of consumers' rights itself is the extension of international human rights law because the foundation of consumer protection is similar to the purpose of the UDHR, i.e., to assist people in reaching an adequate standard of living (Ukwueze, 2016). Additionally, one of the guaranteed rights of humans in the UDHR is every individual has the right to food. Article 25 (1) of the UDHR stipulates that everyone has the right to a standard of living that is adequate for the health and well-being of himself and his family, including food. The FAO (2011) enumerates that the right to food represents a vision of a world without hunger, where a man can feed himself or herself in dignity. Therefore, the scope of the right to food under the UDHR is confined to food security in preventing global hunger and food safety in protecting the health and well-being of a human.

Noticeably, the concept of food safety is interrelated to the right to food information to enable an informed choice, as sufficient information could protect consumers from potential food hazards (Bumblauskas et al., 2020). For instance, the information on nanomaterials on a food label allows consumers to choose food that is scientifically proven to be safe and free from any potential adverse effects and opt for food that is free from ENMs. Therefore, the right to food information is implicitly part of the foundation of international human rights law under the UDHR, i.e., the right to information and food, especially when the information concerns food safety.

### ***3.2.2 The right for food information under the constitution of India***

Part III of the Constitution of India laid down the provisions on fundamental liberties consisting of the right to equality, right to freedom of speech and expression, right against exploitation, right to freedom of conscience and free profession, practice, right to the propagation of religion, and right for education. Article 19 enumerates freedom of speech. Article 19 (1)(a) granted all Indian citizens the right to freedom of speech and expression. In general, freedom of speech

refers to the capability to think and speak freely and the capability to acquire information from various sources such as publication, speech, and public discussion. The right to freedom of speech and expression occupies the most crucial position in the hierarchy of liberty and is regarded as the ultimate condition of liberty (Jain, 2012).

In India, the right to receive information without any interference originated from the concept of freedom of speech and expression (Jain, 2012). The Constitution of India does not expressly prescribe the scope or type of information entitled by the Indian citizens. However, the issue is whether the right to food information is included as part of constitutional rights has been answered in the case of *Ozair Husain v Secretary Ministry of Health and Family Welfare* (2003). The Delhi High Court in *Ozairhusain's* case dealt with consumers' rights for product information. The issue before the court is whether the Constitution of India guarantees the right of consumers to complete and accurate product information, particularly disclosure of ingredients in cosmetics, drugs, and food products. The petitioner claimed that the manufacturers must fully and accurately disclose products' ingredients. It should be done using words or symbols that consumers can easily understand. The petitioner also claimed that the packaging of food, cosmetics, and drugs made from animals should bear an easily identifiable symbol or word expressing that the product contains animal ingredients. Such information is crucial to ensure consumers can make an informed decision, particularly for consumers who must avoid consuming or using products derived from animals.

It was held that it is essential for a person to receive adequate and accurate information to enable him to meaningfully practice his beliefs, values, and opinions, which he holds. Consumers may be prevented from acting according to their beliefs, values, and opinions without sufficient and correct information. For instance, Hindu or vegetarian consumers need to be sufficiently informed that the cosmetics, drugs, or food products they wish to purchase are free from animal-derived components. Without such information, it is difficult for him to practise Hinduism or vegetarianism. In the context mentioned, freedom of expression enshrined in Article 19(1)(a) of the Constitution of India can serve two pivotal purposes (i) it assists consumers in discovering the truth about the ingredients of the products, whether it is animal-free, and (ii) it helps consumers to fulfil his religious belief, value, or opinion.

This case signifies that the protection of consumer rights is implicitly embedded in the Constitution of India. The right to product information is protected as freedom of speech and expression under Article 19(1)(a), and the scope of information that Indian citizens are entitled to includes information on food products. It also demonstrates that the right to information becomes more significant for a society with particular beliefs and values where consumers in India are of various races and practice different religions, such as Hinduism and Islam. When making choices, they must consider the values and beliefs prescribed by their respective faith.

### ***3.3.3 The right to food information in the European Union's constitutions***

In the European Union, the provision of the consumer's right to information is clearly stated in the Treaty on the Functioning of the European Union (TFEU). The TFEU organised the functions of the European Union and is regarded as the constitution of the European Union, which came into force on 1 December 2009 (European Observatory of Working Life, 2012). Title XV of the TFEU enumerated the general provisions on consumer protection. It is considered the foundation for the European policy on consumer protection. It aims to guarantee European consumers' rights and ensure they are entitled to a high level of security. Article 169 (1) of the TFEU recognised the consumer's right to information where it is stipulated that to promote the interests of consumers and to ensure a high level of consumer protection, the Union

shall contribute to protecting the health, safety, and economic interests of consumers, as well as to promoting their right to information.

Article 169 of the TFEU cannot be used directly by consumers as a legal basis against the infringement of consumers' rights. The provision is directed to the European Union bodies and not to members of the European Union or individuals. Article 169 empowers the European Union bodies to take necessary action to ensure consumers in the European Union are granted a high level of protection. The provision must be complemented by a provision of secondary law (Jagielska & Jagielski, 2010). The secondary law includes legislative acts that are binding laws adopted by the Union members, such as EU Regulations (European Justice, 2019).

The right for information under Article 169 (1) of the TFEU has been complemented by two secondary laws, Regulation (EC) No 178/2002, laying down the general principles and requirements of food and Regulation (EU) No 1169/2011 on the provision of food information to consumers. Article 18 (1) of the Regulation (EC) No 178/2002 states that the European Union food law aims to protect the interest of consumers and laid down the foundation for consumers to exercise their right to informed choices concerning the food they consume. Likewise, Regulation (EU) no 1169/2011 requires food information to be made available to the final consumer through a label, other accompanying material, or any other means, including modern technology tools or verbal communication. Therefore, the provision on consumer protection in the TFEU directly impacts the European Union food information law. Consumers can use the provision in these two regulations as the basis for their claim.

Furthermore, protecting consumers' rights in the European Union is also a fundamental right. The European Union Charter of Fundamental Rights (EUCFR) expressed the stipulated consumer protection provision. The EUCFR is the primary framework to protect human rights in the European Union. It brings together the fundamental rights from civil, political, economic, and social rights of everyone living in the Union (Equality and Human Rights Commission, 2016). Protection of consumers' rights is a form of economic and social rights. Article 38 of the EUCFR clearly states that the Union policies shall ensure a high level of consumer protection.

The provision of consumer protection under Article 38 of the EUCFR is general. It does not explicitly specify the scope or type of protection entitled by the European consumers. Arguably, to achieve a high level of consumer protection, the protection shall include the right to adequate and accurate information, one of the fundamental rights of consumers prescribed in the UNGCP. Besides, the incorporation of consumer protection, particularly on the right to information in the TFEU, is a form of 'constitutionalisation' of consumer rights, including the right to food information in the European Union and is perceived as a fundamental right of the European community.

### ***3.4 Right to Food Information in the Federal Constitution of Malaysia***

Part II of the Federal Constitution enumerates the fundamental liberty of a person with nine different rights. These rights are essential to the modern constitution to safeguard every citizen's fundamental civil, political, social, and economic liberties (Fernando & Rajagopal, 2017). It is deemed so important that no one, including the government, is not entitled and prohibited to infringe upon it unless permitted by the law, whether the liberty of an individual includes protecting consumers' right to food information.



### ***3.4.1 Right to life and liberty***

Article 5 (1) of the Federal Constitution states that no person shall be deprived of his life or personal liberty save in accordance with the law. The notion of the right to life or personal liberty is commonly associated with the right to exist, where a person is protected from unlawful death and unlawful imprisonment. However, the right to life is not about the mere existence of a human being. The term 'life' refers to the entitlement to live in a manner that respects individual personal aspirations to get a desired quality of life (Azmi Sharom, 2015). The term 'life' has been interpreted by the Court of Appeal in the case of *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan & Another* (1996). In this case, Justice Gopal Sri Ram held that [...] I have reached the conclusion that the expression 'life' appearing in Article 5(1) does not refer to mere existence. It incorporates all those facets that are an integral part of life itself and those matters which go to form the quality of life. It includes the right to live in a reasonably healthy and pollution-free environment.

This case was never concerned about food choice and food information. It is a case on the dismissal of a public servant where the appellant argued that his dismissal as a school principal violates the provision of the right to life and personal liberty under Article 5(1). However, the judgment provides the interpretation of the concept and scope of the right to life. The judgment illustrates that the term 'life' involves all aspects or attributes important for one's life, influencing the quality of life, such as the right to live in a reasonably safe and healthy environment. Azmi Sharom (2015) reiterated that such interpretation opens the door for future incorporation of rights that is not under the protection of Article 5.

This paper contended that the interpretation of 'life' in Tan Tek Seng's case is relevant to the present issue. As previously explained, the concept of food information enables consumers' informed decisions on food choices. It is considered one of the facets influencing consumers' quality of life, especially when food products threaten consumers' safety and health. Noticeably, not all food products in the market are safe for consumption, and not all foods available to consumers are subjected to pre-market review to ascertain their safety status. For instance, ENMs in food products as additives or preservatives have raised safety and health concerns. Scientific studies demonstrate that oral exposure to ENMs may lead to various health complications (Sajid et al., 2015). Despite the risks, nanofood volume increases in the market because manufacturers perceive ENMs as unique materials that have revolutionised the food industry (Qadri et al., 2018). Consumers are exposed to the potential risks of nanofood unknowingly.

In this situation, consumers have a right to demand information on their foods' nano status where the information directly influences their quality of life. If no information is provided, consumers cannot choose healthy food. Most importantly, they could not take precautionary measures to prevent or minimise the risks. They will be exposed to safety and health risks, negatively affecting their quality of life. Manufacturers and food regulatory authorities must comply with consumers' demand for information. Denying consumers' right to food information that is important for their safety and health implies that consumers in this country are not entitled to safe products and have a good quality of life.

### ***3.4.2 Freedom of speech and expression***

As previously discussed, the right to food information is part of freedom of speech and expression in the Constitution of India. Whether the freedom of speech and expression in the Federal Constitution also recognises the same right since both constitutions have a similar

provision. Article 10(1)(a) of the Federal Constitution states that every citizen has the right to freedom of speech and expression. The protection of freedom of speech and expression is commonly associated with political speech or political expression, which is the cornerstone of a functioning democracy and stimulates discussion on public matters (Haidar Dziauddin, 2005). However, this paper believes that the provision is wide enough not to encompass only political speech and expression but all modes of communication.

In the case of *Public Prosecutor v Ooi Kee Saik & Others* (1971), Justice Raja Azlan Shah explains that 'the right to freedom of speech is simply the right which everyone has to say, write or publish what he pleases so long as he does not commit a breach of the law. The case did not concern food information or food choice, but it involved a seditious statement by the accused toward the government. The statement intended to arouse feelings of hostility and displeasure among Malaysian, which is against the right of speech and expression.

Based on the judgement of Justice Raja Azlan Shah, speech and expression involve the freedom to communicate one's ideas through any medium. Shad Saleem Faruqi (1992) explained that the medium of communication could be through a verbal and non-verbal activity that includes word of mouth, signs, symbols, and gestures, and works of art, music, sculpture, photographs, films, videos, books, magazines, and newspapers. Therefore, the scope of freedom of speech under the Federal Constitution is the right to disseminate or publish information.

Does the Federal Constitution's right to freedom of speech and expression cover the right to request and receive information on food products? There is no direct authority on the right to receive information under the Federal Constitution (Shad Saleem Faruqi, 1992). He referred to the case of *Dow Jones Publishing v Attorney General* (1989), decided by the Singapore Appeal Court. The law in Dow Jones' case is likely to be the position in Malaysia. This case concerns the publication of an article by the appellant in the *Asian Wall Street Journal* regarding the government policies on establishing a secondary stock exchange. The issue concern is the right to receive information under Article 14(1)(a) of the Constitution of the Republic of Singapore. It was held that the scope of freedom of speech and expression is only confined to communication and dissemination of information. It shall exclude the receipt of information. Therefore, applying the principle from Dow Jones's case, the right of consumers to request information about the presence of ENMs in the food ingredients is likely not protected as freedom of speech under the Federal Constitution. Consumers have to rely on the information prescribed in the Food Regulation 1985, Federal Agricultural Marketing Authority (Grading, Packaging, and Labelling of Agricultural Produce) Regulations 2008, and information voluntarily disclosed by manufacturers.

However, this paper contended that the right to request food information to exercise food choices is connected with protecting freedom of speech and expression. The contention is based on the interpretation of freedom of speech and expression in the Constitution of India and the case of *International Dairy Foods Association v Attorney General of the State of Vermont and Commissioner of Agriculture, Food and Markets of the State of Vermont* (1996). As discussed, the Constitution of India protects the right to food information under the freedom of speech and expression because product information is an integral tool for consumers in India to express their values and beliefs. For vegetarian consumers, food information must indicate that the food is free from animal-derived ingredients. The information on the food label must consider the interest of individuals who seek knowledge about their food to make informed dietary choices (Keane, 2006).

Similarly, Rencher (2011) argues that food information should be part of individual fundamental liberties because it is essential for several reasons such as health and safety, religion, ethics, culture, identity, and self-expression. In the International Dairy Foods Association's case, the United States Court of Appeal (Ninth Circuit) held that food information stipulated on a food label is paramount for consumers' health, economic and ethical concerns. A label is not merely to satisfy intense consumer curiosity or the public's right to know. Therefore, information on food labels is also integral for ethical and religious considerations, particularly for a country with diverse religions like Malaysia. There is a possibility that the ingredients are not suitable for the consumption of specific individuals due to ethical and religious constraints. For instance, Muslims are more exposed to various ingredients and manufactured foods resulting in an increased awareness among Muslim consumers on Islamic food dietary requirements. Muslims place a more significant concern on the halal status of their foods, which is an essential nutritional requirement for Muslims (Rahman et al., 2014; Wan Ismail et al., 2020). Hence, the right to request food information to exercise food choice is part of constitutional rights.

#### **4. CONCLUSION**

Consumer activity in choosing food products for consumption can be indirectly linked to human rights protection. The UDHR recognised the right to information as an international human right, which rendered consumers' right to food information as the third generation of human rights. In India and the European Union, consumer protection has been given a constitutional value where their respective constitutions explicitly protect the consumer right to information as a fundamental liberty. Meanwhile, the Federal Constitution does not embody a specific provision on the right to information or the right for food information. However, consumers' right to food information is implicitly related to the right to life stipulated in Article 5(1) of the Federal Constitution. The accurate and adequate food information is considered part of the right to life because it directly affects consumers' quality of life, such as improving their health or preventing unwanted health risks.

Besides that, food information enables consumers to exercise their freedom of speech and expression. Food choice is associated with consumers' expression of ethics, values, and religious beliefs. However, the right to receive information on a food product is not protected by Article 10(1)(a) of the Federal Constitution, rendering the right of consumers to express their values and belief through food choice limited only to the information prescribed by legislation and voluntarily disclosed by manufacturers. With the rapid expansion of science and technology in the food processing industry, consumers require more information about food products available on the market as technology has changed the nature and characteristics of the food they consume. Consumers should be given a right to participate in the labelling decision to determine which information should be included in food packaging. Information on food ingredients, processes, and nutrients are closely connected with consumers' well-being, health, and spiritual belief. Therefore, the right to food information may deserve some degree of constitutional protection. If liberty is the freedom to make one's own choices in life, then those choices should include choices of food.

However, it is uncertain whether the court in Malaysia is ready to include and interpret the right for information to enable food choice as freedom of speech and expression or whether the right is only reserved for political speech and expression. In furtherance of promoting the right to food information and food choice from the perspective of fundamental liberties, this paper also recommends future research on public awareness and knowledge on right to food information and food choice from the perspective of fundamental liberties, in Malaysia. It is to examine

whether the public is aware of the wide protection granted by the Federal Constitution including food choice.

## **ACKNOWLEDGEMENT**

This study was supported by the Faculty of Law Universiti Teknologi MARA Shah Alam and Centre of Foundation Studies, Universiti Teknologi MARA, Cawangan Selangor, Kampus Dengkil. Greatest appreciation for the support given in any way.

## **AUTHOR CONTRIBUTION STATEMENT**

NAH and NA collected and analysed the relevant literature. NAH also wrote the introduction methodology and on the right to food information as a fundamental right. NA and SMA wrote the right to food information in the Federal Constitution and the conclusion. All authors read and approved the final manuscript.

## **DECLARATION OF CONFLICTING INTEREST**

The authors declare that there is no conflict of interest.

## **FUNDING**

The authors received no financial support for this article's research, authorship, and/or publication.

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