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“LAW & SOCIAL ORDER: CURRENT CHALLENGES IN MALAYSIA”

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PUTRAJAYA

“CURRENT CHALLENGES IN PRESERVING SOCIAL ORDER AND
NATIONAL HARMONY – A CRITICAL NOTE”

BY

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Bismillahir Rahmanir Rahim, Assalamualaikum,
Salam Sejahtera and Salam 1Malaysia.

YB Dato' Senator Paul Low,
Minister in the Prime Minister's Department,

YBhg. Datuk Solicitor General of Malaysia and
Datuk-Datuk Deputy Solicitors General,

Chief Registrar of the Federal Court,

Deans of Universities,

Director of the Legal Affairs Division, Prime Minister's Department,

Madam Lee Lay Choo,
Director of the Judicial and Legal Training Institute (ILKAP),

Distinguished guests,

Ladies and gentlemen.

INTRODUCTION

Allow me to begin by congratulating the Judicial and Legal Training Institute (ILKAP) on the organization of the 2014 edition of the ILKAP National Law Conference. The hard work put in by the ILKAP officers and staff to organize this annual event is indeed greatly appreciated.

The selected theme, “*Law and Social Order: Current Challenges in Malaysia*”, seems particularly appropriate for this year. This forum and its theme are also in line with my Chambers mission of community outreach to promote better understanding of current legal issues. Given that law and social order affects each and every one of us, it is hoped that the broad-based sessions designed for this forum will be optimized by the participants for intellectual discourse and to explore possible solutions to the challenges we face today.

OVERVIEW

I should like to begin with a word on the topic assigned to me today, “*Current Challenges in Preserving Social Order and National Harmony – A Critical Note*”. The Concise Oxford Dictionary defines the verb “preserve” to mean either “maintain in its original or existing state” or “to keep safe from harm or injury”. As both “social order” and “national harmony” are living, evolving concepts, it would be difficult to advocate “freezing” their development. But we can strive to “safeguard” them for current and future generations, if we think they are worth keeping.

Ladies and gentlemen.

It should be recognized from the outset that it is not for any government or body to strive to “preserve” social order or national harmony. These are matters which must evolve with the citizenry. But supposing the people do choose to undertake this task. The first question that arises would be which timeline should we use as the baseline? Should we “preserve” social order and national harmony as we have it today or as they existed on Malaysia Day or when the Rukun Negara was crystalized in 1970?

The second question would be what are we supposed to be preserving. What do we mean by “social order” and “national harmony”? Do each of us understand these terms in the same way? Or do we each interpret them for our own convenience and purposes and to our own individual liking?

As Ludwig Wittgenstein recognized in his “Philosophical Investigations (1953)”, “*We see the world the way we do, not because that is the way it is, but because we have these ways of seeing.*” The fact is that determining what the terms “social order” is and “national harmony” means is like viewing a picture through a kaleidoscope. They will appear as constantly changing patterns.

In terms of “social order”, it is generally accepted from legal studies that societies construct a sense of social order that is specific to them. As a

part of this broad process, they develop a collective legal consciousness¹.

However in the context of Malaysia and the topic this morning, “social order” will be confined to the social order created by the social contract enshrined in the Federal Constitution and recorded in the related constitutional documents. These include the “Report of the Federation of Malaya Constitutional Commission, 1956-1957” (also known as the Reid Commission Report), the “Constitutional Proposals for the Federation of Malaya” (White Paper, June 1957), the “Report of the Commission of Enquiry, North Borneo and Sarawak” (also known as the Cobbold Commission Report, 21 June 1962), and the “Malaysia Report of the Inter-Governmental Committee 1962” (also known as the Lansdowne Committee Report).

This is the social contract entered into by the people of Malaysia upon Independence and Malaysia Day. This social order and social contract is the vehicle by which our constitutional forefathers sought to ensure the inculcation and preservation of economic prosperity and national unity and harmony for the peoples of Malaysia. It is therefore in this limited context that this Keynote Address will seek to address the challenges to the preservation of social order and national harmony.

¹ Marina Kurkchyan, “Perceptions of Law and Social Order: A Cross-National Comparison of Collective Legal Consciousness”, *Wisconsin International Law Journal*, p390.

Ladies and gentlemen,

WHAT WAS

Confucious said, “*Study the past, if you would divine the future*”. Edmund Burke also tells us that, “*Those who don’t know history are destined to repeat it.*”

The fact is that the seeds of the challenges to social order and national harmony faced today and for the foreseeable future were planted a long time ago. To understand these challenges and our options to overcome them, we must first appreciate the evolution of social order and national harmony in Malaysia.

From British rule to Independence

Open any history book on Malaysia and it will recount that Malaysia’s communal approach to politics and social and economic structure today is the legacy of the British system of governance in Malaya. It has its genesis in the segregation of ethnic migrant workers according to sectors of work. When the general Malay population refused to work with the British in the tin mines and rubber plantations, the two most important and profitable exports of the country in the late 19th century, the British encouraged the immigration of labourers from China and India to work in these sectors as well as in public infrastructure works, rails and roads. This then concentrated the Chinese population in the main cities and towns while the Indians lived in rubber estates. The Malays stayed mainly in the rural areas and concentrated on the agricultural and fishing sectors.²

² Muhammed Abdul Khalid, *The Colour of Inequality – Ethnicity, Class, Income and Wealth in Malaysia*.

The British were not interested in integration and instead encouraged the Chinese and Indian immigrants continued loyalty to their respective homeland. As a corollary to the foreign workers Malaysia depends on today, Malaya was only to be considered “*tanah tumpahnya peluhku*” – the land where I toil for wealth without more. But when China fell to the communists and India was wrecked with poverty, the Chinese and Indian immigrant workers decided they should stay permanently for a better future.

Then the Japanese attacked Malaya and World War II broke out. As they say, war is the great equalizer. Under British stewardship, the inhabitants fought as one to save Malaya, fighting guerilla wars in the jungles until the Japanese were finally defeated at Hiroshima and Nagasaki.

But polarization would resurface in an even more detrimental form after the Second World War. From its early beginnings in the 1920's, the Malayan Communist Party (MCP) worked through Chinese schools and youth organizations. In fighting its guerrilla war and war of attrition against the British and later Malayan governments from 1948 to 1960, the MCP would recruit and exploit its Chinese connections while the security forces were predominantly Malay and Indian.

The preventive actions taken to fight the communists such as the establishment of New Villages under the Briggs' Plan would contribute to further communalist fervor and racial polarization. The authorities missed the opportunity of bringing the various ethnic groups together during the major resettlement exercises.

More than 400 resettlement villages were created and in the process some half-million persons were removed from isolated rural locations to compact and guarded settlements. New villagers were predominantly Chinese and agriculture was their primary employment. The Malay elements consisted of the families of polis constables who were posted for security purposes.

Throughout the insurgency, Malays remained mostly in the kampongs while the Indians were mostly in the various rubber plantations.³ The British tried to win the hearts and minds of the internees by providing them with land, education and health services, hoping to convert “reservoirs of resentment into bastions of loyal Malayan citizenry”. However when the new villages were established as electoral constituencies, it further delineated politics along racial lines.

1957 - 1969

With the heritage of such British policies, it comes as no surprise that at Independence on 31 August 1957, there was marked disparity among the races in the economic, education and other sectors. From an economic perspective, Malays had no capital wealth and their participation in the modern economy was almost non-existent, even among the Malay aristocratic class. The Chinese had become the main participant in the economic and commercial sectors while the majority of Malays remained in the rural areas. The lucrative modern industries and services sectors remained Euro-centric. Poverty, especially among the

³ J.J. Raj, *The Struggle for Malaysian Independence*.

Malays, was widespread and the income inequalities between the races a matter of serious concern for the new, young government.

This was therefore the reason for the creation of the “social contract”. It is the **principle of achieving balance** that underpins the relevant provisions in the Federal Constitution. This noble intention of the drafters and founding fathers is clearly recorded in the General Introduction to the Reid Commission Report. The relevant extracts of paragraphs 14, 15 and 18 read as follows:

*“14. In making our recommendations we have had constantly in mind **two objectives**; first that there must be the fullest opportunity for the growth of a united, free and democratic nation, and secondly that there must be every facility for the development of the resources of the country and the maintenance and improvement of the standard of living of the people. These objectives can only be achieved by the action of the people themselves: our task is to provide the framework most appropriate for their achievement. **We must start from the present position as we find it, taking account not only of the history and tradition of Malaya but also of existing social and economic conditions.** Much that is good has already been achieved and we would not seek to undo what has been done. But many existing arrangements are inappropriate for a self-governing and independent country, and, in recommending the form which the necessary political and administrative changes should take, we have borne in mind that the **new provisions** must*

be both practicable in existing circumstances and fair to all sections of the community.

15. Approaching our task in this way we think it essential that there should be a strong central Government with a common nationality for the whole Federation. Moreover we think it also essential that the States and Settlements should enjoy a measure of autonomy and that Their Highnesses the Rulers should be constitutional Rulers of their respective States with appropriate provisions safeguarding their position and prestige.

We have made provision for a new constitutional Head of State for the Federation and for the Settlements becoming States in the new Federation. We have adopted without substantial change proposals for the acquisition of citizenship of the Federation which have been agreed by the main parties representing all races. We recognize the need for safeguarding the special position of the Malays in a manner consistent with the legitimate interests of other communities, and we have given particular consideration to this need. We have framed our recommendations on the basis that Malaya will remain within the Commonwealth and we have found general agreement on this matter.

16.

17.

18. *In drafting the Constitution we have had to consider a very large number of questions. **Many of these questions have been the subject of representations formal and informal from various organizations and individuals.** In reaching our decisions on them we have tried to give full weight to the various views expressed to us and we shall give our reasons for making these decisions. ...”.*

[Emphasis added]

Almarhum Sultan Azlan Shah succinctly narrated this historical background to the social contract in his opening speech at the 12th Malaysian Law Conference in 2003 as follows:

“We embarked on a journey as a constitutional democracy with the full realization that we were a multi-racial people with different languages, cultures and religion. Our inherent differences had to be accommodated into a constitutional framework that recognised the traditional features of Malay society with the Sultanate system at the apex as a distinct feature of the Malaysian Constitution.

Thus there was produced in August 1957 a unique document without any parallel anywhere. It adopted the essential features of the Westminster model and built it into the traditional features of Malay society.

This Constitution reflected a social contract between the multi-racial peoples of our country. Thus matters of citizenship for the non-Malays, the Malay language, and

special privileges for the Malays and the indigenous peoples of Malaysia were safeguarded and given the added protection of requiring the consent of the Conference of Rulers before change could be effected to them.”

“It is fundamental in this regard that the Federal Constitution is the supreme law of the land and constitutes the grundnorm to which all the other laws are subject. This essential feature of the Federal Constitution ensures that the social contract between the various races of our country embodied in the independence Constitution of 1957 is safeguarded and forever enures to the Malaysian people as a whole, for their benefit.”⁴

In this regard, the value of the **“social contract” elements**⁵ we have inherited should never be underestimated or undermined. It must be appreciated that these elements in the Federal Constitution were **engineered by the Alliance in consultation with the Malay Rulers as the best solution to protect the interest of the groups concerned.** This in particular includes the **trade-off between the granting of citizenship for the Chinese and Indian migrants for recognition of the special Malay rights.** Similarly the protections for the customary aboriginal rights of the indigenous peoples consciously entrenched in the Federal Constitution.

⁴ Speech delivered during the 12th Malaysian Law Conference, themed “Evolving a Malaysian Nation: The Role of Law and Lawyers”. Published in “Constitutional Monarchy, Rule of Law and Good Governance: Selected Essays and Speeches by HRH Sultan Azlan Shah”, at pg. 330-332.

⁵ Ooi Kee Beng, “The Reluctant Politician: Tun Dr. Ismail and His Time” (2006).

For the States, the sacrifice of their sovereignty was set-off by retention of certain economic rights.⁶ Thus the relevant provisions of the Federal Constitution **reflect the difficult compromises and sacrifices made by the component States as well as the various peoples of Malaysia.**

As in the Australian constitutional approach, it should also be recognized that there are two sides to the coin - the guarantees afforded to one group would be seen from the other groups' perspective as a restriction or prohibition on their rights, even though there may be no actual detriment or loss; merely the perception of deprivation. In other words, affirmative action is recognized and is being implemented in other countries as well. It also acknowledges that what is given to one group is often seen as deprivation to another side even if it may not be so. In most cases it is actually more a matter of imagination.

May 13 1969 and its aftermath

In "Nation Before Self and Values That Do Not Die", at page 417, Tan Sri Yuen Yuet Leng captured post-independence multiracialism as follows:

"The emotions and practice of Malayan multiracialism were striking in the jubilation of our early independence years and without any obvious prejudice to the emotions or sensitivity of any community. ... Then sometime and somewhere along the course of further national, economic and social development and for various reasons we have taken a turn towards graduating racial and

⁶ At paragraphs 172-176 of the Reid Commission Report.

religious polarization. I had sometimes even asked myself if it was because we had solved the threat of communism too fast and this had made some politicians and the country to forget it so fast and so soon. ...”

In “*The Colour of Inequality – Ethnicity, Class, Income and Wealth in Malaysia*”, at pages 7-8, Muhammed Abdul Khalid summarized the events leading up to the communal riots in 1969 as follows:

“The mutual resentment of Malays and Chinese on the disparity of economic and political representations reached its peak in 1969 after the third general elections. The Malays felt that they were not enjoying the fruits of Independence, especially in terms of economic uplifting. The socio-economic status of the Malays had not changed; poverty among the Malays was still rampant ... Not unexpectedly, in the third general election in 1969, almost half of the Malays voted for the opposition, ...and a majority of the non-Malays voted for the Chinese opposition parties. ... After the election, the city of Kuala Lumpur was engulfed in racial riots – primarily due to culturally offensive behavior by jubilant opposition party supporters, according to official records.”⁷

Immediate measures were taken by the National Operations Council, an ad hoc Cabinet, set up to govern the country while Parliament was suspended. This included the drafting of the five principles of the *Rukun*

⁷ National Operations Council. *The May 13 Tragedy: A Report*. Kuala Lumpur, 1969; Wan Hashim. *Race Relations in Malaysia*. Kuala Lumpur: Heinemann Educational Books Asia Ltd, 1983; Tunku Abdul Rahman. *May 13: Before and After*. Kuala Lumpur: Utusan Melayu Press, 2004; Jomo K.S. *The New Economic Policy and Interethnic Relations in Malaysia*. United Nations Research Institute for Social Development, New York, 2004.

Negara (Articles of Faith of the State⁸) and the introduction of the New Economic Policy.

The **Rukun Negara** was proclaimed by the Yang di-Pertuan Agong on 31 August 1970 (13th Independence Day) **to be a national ideology and philosophy**. The five principles of the Rukun Negara were supposed to be the **key to national harmony and unity**, for the success and stability of Malaysia's multicultural society.

The **New Economic Policy** (NEP) was formulated with the overriding objective of attaining national unity and fostering nation-building through the two-pronged strategy of eradicating poverty and restructuring society.⁹ The first prong of the NEP strategy was to eradicate poverty, irrespective of race, while the second prong of the NEP strategy sought to restructure society by eliminating the identification of race with economic function.¹⁰ The key element of the second prong was the creation of the Bumiputera Commercial and Industrial Community (BCIC) to ensure a viable participation of Bumiputera individuals in the modern sectors of the economy. The target was that Bumiputera would own and manage at least 30 per cent of the total commercial and industrial activities of the economy by 1990. The 30 per cent target was a means to an end, namely to achieve better distribution of assets and income.

Despite the NEP and other efforts, the threat of disintegration of the carefully crafted unity of the nation would however continue. This was primarily because of dissatisfaction over growing economic disparity and

⁸ Ooi Kee Beng, "The Reluctant Politician – Tun Dr Ismail and His Time" at pg 220.

⁹ Malaysia. 2nd Malaysia Plan. Government of Malaysia, 1971.

¹⁰ Ibid.

perceived inequalities in various sectors such as education, as well as between urban and rural areas.

At the end of 1974 high rates of inflation and increase in food prices led to peasant demonstrations in Baling and Sik in Kedah, supported by university students in Kuala Lumpur and Penang. The Government intervened with millions of ringgit in subsidies to alleviate tensions.

It became clear that the education system under the British did not take into consideration the needs of development, the creation of a national identity and the unity of the nation. Instead it had deliberately focused on reinforcing the loyalty of the migrant workers and their descendants to their countries of origin and suppressed the spirit of development of the local people.

Therefore in 1957, an educational policy was developed for the new Malaya which focused on its future needs as follows:

*“The educational policy of the Federation is to establish a **national system of education acceptable to the people as a whole which will satisfy their needs and promote their cultural, social, economic and political development as a nation**, with the intention of **making the Malay language the national language of the country whilst preserving and sustaining the growth of the language and culture of peoples other than Malays living in the country**.”¹¹*

[Emphasis added]

¹¹ As stated in section 3 of the Education Ordinance 1957 [F.M. No. 2 of 1957] and later reproduced in the preamble to the Education Act 1961.

Therefore we all need to read and understand the preambles and sections of laws carefully before making comments.

The policy was construed and implemented with the guidance of the Razak Report 1956 and later the Rahman Talib Report 1960. The **goal of the policy was to unite multi-racial school children and prepare a work force of the people for Malaysia's economic requirements.**¹²

By the end of its period in 1990, the NEP had achieved remarkable success. Poverty levels had dropped, corporate equity ownership by the Bumiputera had improved, there were more Bumiputera involved in modern occupations, enrolled in universities and there was a booming Bumiputera middle class. But it was not the panacea for all Malaysia's challenges.

Ladies and gentlemen,

WHAT IS

In "Theories of Social Order", Thomas Schelling said that, "*When all individuals pursue their own preferences, the outcome is segregation rather than integration*". Where then does Malaysia stand in its 57th year as an Independent nation in terms of national unity and national harmony?

¹² Dasar-Dasar Pembangunan Malaysia, Institut Tadbiran Awam Negara (INTAN) Malaysia (1994), Bab 9 - Dasar Pendidikan Kebangsaan, pg 90.

One of the biggest challenges to social order and national harmony today is actually our own ignorance of and indifference to our history, our laws and our values and principles as a nation. This is aside from the multiple external threats such as corruption, religious intolerance, radicalization and extremism and organized criminal activities.

Appreciation of the symbols of national unity

Charles de Montesquieu said, *“There is no nation so powerful, as one that obeys its laws not from principals of fear or reason, but from passion”*. If there is a root cause of our current dilemma, it appears to be a lack of understanding of everything that is supposed to make us a nation. Such passion for our nation is supposed to be inculcated from cradle to grave, by parents and teachers. But as J. Edgar Hoover said, *“No amount of law enforcement can solve a problem that goes back to the family”*.

First, the most important national symbol of all, namely the Federal Constitution. It is the supreme law of the land and the corner stone of our social order and national unity. However, aside from a specialist group of lawyers and historians, does anyone read its actual provisions, and each and every one of its provisions? Some seem to read selected articles and then claim to be lawyers!

Secondly, let us take that foremost symbol, the national flag. Do we respect, take pride and understand its’ power to unite our nation? Or is this something only for the security forces and school children? And we forget our times and days as school children too.

Next let us consider the national anthem – “Negara Ku”. How many truly understand and appreciate the meaning of those first words in our national anthem - “*Negara Ku, Tanah tumpahnya darah ku*”. Taken literally, it means my country, the place where I am willing to spill my blood in defending it or the land of my birth. Metaphorically, it means my country, my Malaysian motherland or homeland. Our security forces who had to fight in the attacks against Sabah last year proved they were willing to die for their country. Others make noise but the question is whether they are willing to die for our country.

Fourthly, do we understand the importance of the Yang di-Pertuan Agong as the living symbol of our unity. If we did, would we be so quick to disparage this highest constitutional office?

Finally, let us revisit the Rukun Negara (Articles of Faith of the State¹³). Do we merely recite or do we actually internalize the 5 principles which were intended to be the moral compass and key to national harmony and unity. Bear in mind that the Rukun Negara was specifically crafted for the success and stability of Malaysia’s multicultural society. Do we epitomize and practice these values which are supposed to define the national character of the people? Do we realize that the Declaratory Preamble to the Rukun Negara holds equal importance to the 5 principles, if not more. To be frank, how many have read the Preamble?

Perhaps it is worth for us to take a moment to reflect on the continuing relevance of the Rukun Negara today. The five principles of the Rukun Negara declare that -

¹³ Ooi Kee Beng, “The Reluctant Politician – Tun Dr Ismail and His Time” at pg 220.

*“We, the people of Malaysia, pledge our united efforts **to attain these ends, guided by these principles:***

- *Belief in God*
- *Loyalty to King and Country*
- *Supremacy of the Constitution*
- *Rule of Law*
- *Good behavior and Morality.” [Emphasis added]*

But it is the declaration that sets out **what is intended to be achieved** through these principles. The Declaration states:

“DECLARATION OF RUKUN NEGARA¹⁴

Now therefore, our nation Malaysia, being dedicated:

- **to achieving a greater unity for all her peoples:**
- *to maintaining a democratic way of life;*
- *to **creating a just society** in which the **wealth of the nation** shall be **equitably** shared;*
- **to ensuring a liberal approach to her rich and diverse cultural traditions;** and

¹⁴ Official portal of the Department of National Unity and National Integration at http://www.jpnn.gov.my/en/isytihar_krn, downloaded 8 November 2014; Malaysian Coin at <http://www.malaysiancoin.com/2014/07/sejarah-dan-maksud-rukun-negara-malaysia.ht...> downloaded 8 November 2014.

- *to building a progressive society which shall be oriented to modern science and technology;”.*

[Emphasis added]

In relation to the third aim to be achieved, it is emphasized that it refers to the “equitable” sharing of wealth and not the “equal” sharing of wealth, and the difference in meaning should be clear to all.

Ladies and gentlemen,

Challenges from religious and racial intolerance, misunderstanding and baiting

Marcus Aurelius said that, “*Everything we hear is an opinion, not a fact. Everything we see is a perspective, not the truth.*” Yet in recent memory we have been horrified by incidents involving cow’s heads, pig’s heads, desecration of places of worship by at best misguided youth and at worst, people with more insidious agendas, threats to burn holy books, seizures of Bibles and many other untoward incidents. This is greatly augmented and exacerbated through the barbs and hurtful words traded on social media, even among those who consider themselves friends. We joke that the mild mannered polite Malaysian turns into a monster once placed behind the wheel of a car. But there is nothing humorous about rampaging Malaysians on the internet or in the real world spouting hateful and seditious words.

With every incident, we get closer to the precipice. What is worse is when Articles of the Federal Constitution are selectively and disingenuously cited to justify actions, warranted or otherwise.

The “Standard Operating Procedure” is now the call for arrest and prosecution of the perpetrators. Given that nothing in the mass media or cyberspace is ever erased unless by deliberate action, postings of a year or a decade ago can resurface to cause harm and discontent where at the actual time no one cared to take notice. In fact, at that particular point in time, no one may even bat an eye. But years later when it comes up, everyone reacts. Assuming perpetrators can be identified, and this is a veritable challenge when it involves the anonymity of the Internet, this then creates a never ending cycle of retaliation and one-upmanship.

In this regard it must be emphasized that law enforcement agencies cannot alone resolve this matter. Use of force alone cannot solve the problem. If law enforcement agencies, including the Attorney General’s Chambers, are expected to go it alone, their integrity will eventually be questioned because they will be caught in the middle and can never satisfy all interested sides. Therefore, the appeal from law enforcement is that there must be individual responsibility and accountability of the service providers. This should also be supplemented by firm and rational responses from political, religious and community leaders.

In fact, if everybody demands “equality”, then should there not also be equality in the groups to be charged? If one side is charged, then someone from the other side should also be charged? But if this approach is taken, would it not become an endless series of retaliation?

Respect for all religions

Article 3 of the Federal Constitution provides that Islam is the religion of the Federation; but other religions may be practiced in peace and harmony in any part of the Federation. **Clause (4) of Article 3** further provides that nothing in Article 3 derogates from any other provision of the Federal Constitution. **This Article must be respected.**

Article 11 of the Federal Constitution provides that every person has the right to profess and practice his religion and to propagate it. However this is subject to State law and in respect of the Federal Territories, federal law, which may control or restrict the propagation of any religious doctrine or belief among persons professing the religion of Islam.

Let us briefly review the implications of freedom of religion when it is not exercised responsibly.

Child custody cases

Inter-racial marriages have given rise to a new conflict between civil law and Syariah law in relation to the unilateral conversion as well as custody issues of minor children where only one spouse converts to Islam. The increasing number of cases has also raised allegations of racial discrimination by the courts and authorities. The anguish to the families cannot be overstated and that is a fact.

In this regard, the failure of the converting spouses to resolve the family arrangements prior to conversion and in fact, attempting to use the different jurisdictions of the civil and Syariah courts to their advantage, jeopardizes not only family harmony but potentially national harmony. Consequentially, the integrity of the Royal Malaysia Police and the Attorney General's Chambers is also called into question due to the issue of enforcement of conflicting court orders. As stated earlier, if the integrity of law enforcement agencies is compromised, it will be detrimental to their ability to garner the respect of the public which is fundamental to their ability to carry out their duties.

In 2009, amendments were proposed to the Law Reform (Marriage and Divorce) Act 1976, the Islamic Family Law (Federal Territories) Act 1984 and the Administration of Islamic Law (Federal Territories) Act 1993 to ensure that issues like child support and child custody would be determined by the court in which the marriage was registered. These amendments however remain pending.¹⁵

Bible seizure cases

In the wake of the controversy of the seizure of Bahasa Malaysia/ Indonesia Bibles and other publications containing the term "Allah" in 2010, and various threats to burn those Bibles, the Government announced the "**Ten Point Solution**"¹⁶ on 2 April 2011.

¹⁵ Malaymail Online, 24 July 2014.

¹⁶ As restated in the letter from the Honourable Prime Minister of Malaysia, Dato' Sri Mohd Najib, to Bishop Ng Moon Hing, Chairman, Christian Federation of Malaysia (CFM) dated 11 April 2011. The Ten Point Solution is as follows:

The “Ten Point Solution” was intended to de-escalate concerns and tensions within the country. The “Ten Point Solution” took into account the polarity of views of the different religious groups, including Christians and Muslims.

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- “1. Bibles in all languages can be imported into the country, including Bahasa Malaysia/ Indonesia.
 2. These Bibles can also be printed locally in Peninsula Malaysia, Sabah and Sarawak. This is a new development which should be welcome by the Christian groups.
 3. Bibles in indigenous languages of Sabah and Sarawak such as Iban, Kadazan-Dusun and Lun Bawang can also be printed locally and imported.
 4. For Sabah and Sarawak, in recognition of the large Christian community in these states, there are no conditions attached to the importation and local printing of the Bibles in all languages, including Bahasa Malaysia/ Indonesia and indigenous languages. There is no requirement for any stamp or serial number.
 5. Taking into account the interest of the larger Muslim community, for Peninsula Malaysia, Bibles in Bahasa Malaysia/ Indonesia, imported or printed, must have the words “Christian Publication” and the cross sign printed on the front covers.
 6. In the spirit of 1Malaysia and recognizing that many people travel between Sabah and Sarawak and Peninsula Malaysia, there should be no prohibitions and restrictions for people who bring along their bibles and Christian materials on such travel.
 7. **A directive on the Bible has been issued by the Ketua Setiausaha (KSU) of the Home Ministry to ensure proper implementation of this cabinet decision. Failure to comply will be subject the officers to disciplinary action under the General Orders.** A comprehensive briefing by top officials, including the Attorney General (AG), will be given to all relevant civil servants to ensure good understanding and proper implementation of the directive.
 8. For the impounded Bibles in Kuching, Gideon, the importer can collect all the 30,000 Bibles free of charge. We undertake to ensure the parties involved are reimbursed. The same offer remains available for the importer of the 5,100 Bibles in Port Klang, which have already been collected by the Bible Society Malaysia (BSM) last week.
 9. Beyond the Bible issue, the Government wishes to reiterate its commitment to work with the Christian groups and all the different religious groups in order to address inter religious issues and work towards the fulfillment of all religious aspirations in accordance with the constitution, taking into account the other relevant laws of the country. In order to bring urgency to this work, in my capacity as the Prime Minister, I will meet the representatives of the Christian Federation of Malaysia (CFM) soon to discuss the way forward.
 10. The Christian Ministers in the cabinet will meet on a regular basis with representatives of the various Christian groups in order to discuss their issues and work with the relevant Ministries and myself in order to resolve them.”.[*Emphasis added*]

Despite the 2011 “Ten Point Solution”, the issue remained simmering for various reasons and regained prominence when the Ministry of Home Affairs banned “*The Herald – The Catholic Weekly*”. More controversy arose with the seizure of Bibles from the premises of the Bible Society of Malaysia (BSM) this year. However the Honourable Prime Minister made it clear on 21 October 2013 when he stressed that the Court of Appeal decision upholding the Ministry of Home Affairs ban on the issue of the word “Allah” did not affect the Christians of Sabah and Sarawak.

Allow me to highlight the salient points of the Federal Court decision in *The Herald* case. The **Minister of Home Affairs’ prohibition** of the publication using the word “Allah” in the Bahasa Melayu text of the “Herald” **was premised on national security, public order and public safety as the subject matter raised issues of religious sensitivities in this country**. This prohibition was done in accordance with sections 6 and 12 of the Printing Presses and Publications Act 1984 and Condition 6, Form B, First Schedule of the Printing Presses and Publications (Licences and Permits) Rules 1984¹⁷.

“National security” – that was the issue the Government was concerned with. It had nothing to do with freedom of religion. It was only concerned with national security.

Thus the Court of Appeal decision is confined to the publication of the Bahasa Melayu text of the Herald and not the Al-Kitab, which are two publications of entirely different characters. The Al-Kitab is the Malay version of the Bible and meant for Christians and for use in churches

¹⁷ P.U.(A) 305/84.

whereas ***The Herald* is a newspaper which is also accessible online and can be read by Muslims as well as non-Muslims.**

So actually the crux of the issue in the whole Kalimah “Allah” debate is whether it could be used to propagate Christianity to Muslims. It is not an issue of freedom of religion for Christians themselves.

The Court also reemphasized that the Executive is also the best party to decide on matters relating to national security and public order. Nor is the Minister obliged to wait for threat or violence to occur before making his decision. It suffices if there exists a potential for such threat to national security and public order. The **Court further noted that the said prohibition in that case did not prevent the Christian community from practicing their religion and there was therefore no breach of the freedom of religion under Article 11 of the Federal Constitution.**

The issue of the seizure of the Bibles from the Bible Society of Malaysia by Jabatan Agama Islam Selangor (JAIS) in January 2014 also appears to be finally resolved by the Selangor Menteri Besar’s recent announcement that they will be returned. But this was not before the Attorney General’s Chambers or rather the Attorney General was subjected to pressure and criticism on the Attorney General’s decision not to prosecute the case and its’ directive for the Bibles to be released by the agency that had seized them. It is welcomed that sooner or later everybody will come to see the light.

In that case, Chambers 11 June 2014 Media Statement explained that **the Bibles concerned were not publications within the meaning of section 9(1)(a) of the said Enactment.** This was based on the facts and evidence submitted, and taking into account the relevant provisions of the *Enakmen Ugama Bukan Islam (Kawalan Pengembangan Di Kalangan Orang Islam) 1988*.

In any case, as Chambers also pointed out in its statement, **BSM was neither the author, publisher or printer of the books concerned to come within the scope of section 9 of the Enactment. BSM had merely imported the books** which were **published and printed in Indonesia** with the intention to distribute them to Christians in Sabah and Sarawak only.

It is also noted that the Bibles which were seized at the KLIA recently, which arose out of a misunderstanding, have already been released to the importer concerned.

Seditious and injurious comments

In relation to seditious and injurious comments, first and foremost, it must be appreciated that we all have different perceptions of things. In other words, what is in reality may not be the way we see it. A lot depends on our backgrounds, upbringing, culture, religion and other factors. Furthermore, social precepts evolve with time and things which were considered treason or seditious in the 1900s are today considered acceptable practice. For example, Mat Salleh of Sabah was considered

a pirate in the 18th century by the British but today he is considered a hero. Another example is questioning how the government carries out its policies. Today this is considered part of the democratic process.

But those who resort to debating issues in the public fora, including the social media, should also be aware of the need to exercise their freedom of speech and expression responsibly in case they overstep established boundaries and end up committing offences. As His Lordship Raja Azlan Shah J (as he then was) stated in *PP v Ooi Kee Saik* [1971] 2 MLJ 108, quoting the following passage from *A.K. Gopalan v State of Madras* AIR [1950] SC 27 with approval:

“There cannot be anything as absolute or uncontrolled liberty wholly free from restraint; for that would lead to anarchy and disorder ...”.

In other words, there must be a limit to everything. Nothing is wholly free or without restraint.

In this regard, a distinction must be drawn between campaigns which are conducted in a civil manner, which invite mature discussion and debate on issues of concern as opposed to campaigns which affect national sovereignty, national security and public order. The latter category would necessarily encompass the attacks against each other's religions, race and culture, the institution of the constitutional Rulers and the Yang di-Pertuan Agong, as well as calls for the secession of Sabah and Sarawak from the Federation of Malaysia.

The point that must be recognized is that no government can stop its people from discussing matters which affect their constitutional and legal rights. That goes to the accountability and transparency of any elected government in any country in the world.

It must also be recognized that measures should be taken to respect the ideals established by the Federal Constitution – in letter and in spirit, whether it is concerning religion, citizenship of non-Malays, the special rights of Malay/ Bumiputra and the Orang Asal or the special position and privileges of the Rulers or the rights conferred on Sabah and Sarawak. All these rights must be respected and implemented unless and until the Federal Constitution is amended by a vote or referendum of the people. This is because **all these are elements of the “social contract” and constitute the basic pillars of the Federal Constitution and Malaysia.**

Ibrahim Ali's case

It should be recognized that statements such as those made by Ibrahim Ali and actions such as those of the church group that precipitated that statement do not contribute to the enhancement of social order and national unity.

In the Ibrahim Ali case, the Attorney General's Chambers has explained the facts in the Chambers Media Statement dated 27 October 2014. The police report that was made on 21 January 2013 against Dato' Ibrahim Ali alleged that he had called on Muslims to seize and burn copies of the “Al-Kitab” which contained the word “Allah” or other Arabic words, and also contained writing in Jawi during a press conference after the

Perkasa Convention in UITM Penang. This supposed instigation was reproduced in the portal Free Malaysia Today dated 19 January 2013. To understand whether this statement was seditious or not, we must look at the full statement he made as well as the context in which it was made.

As has also been explained, Dato' Ibrahim Ali made his statement in reaction to a mass media report about a police report that had been lodged about the distribution of copies of these Bibles to students, including Muslim students, in front of SMK Jelutong on 17 January 2013. Both police reports and the allegations made were investigated by the Royal Malaysia Police. Decisions were then made, based on the evidence submitted. In the case of **the persons who were distributing the Bibles, they were NOT prosecuted because there was no proof that they intended to give those Bibles only to Muslim students.** Based on the facts, they really did not know the boys concerned were Muslims. Therefore it was decided not to prosecute them. But **no one has questioned this non-prosecution** although clearly the Bibles were distributed by these persons outside the school. Everyone accepted that the elements of section 298A of the Penal Code and section 5 of the Syariah Criminal Offences (Penang) Enactment 1996 were not fulfilled.

Moving on to the non-prosecution of Dato' Ibrahim Ali's actions, perhaps our clarification in the Media Statement should have been clearer than clear.

The **AGC agrees with the comments made by certain parties that an offence under section 4 of the Sedition Act 1948 is not dependent on intention.** The **action** of making a statement with a seditious

tendency (as that term is defined in the Act) **is enough**. We are well aware of decisions such as that in ***Public Prosecutor v Ooi Kee Saik & Ors*** [1971] 2 MLJ 108 where His Lordship Raja Azlan Shah J stressed this very point.

The oft cited dicta of His Lordship Raja Azlan Shah J states that, “*what the prosecution have to prove and all that the prosecution have to prove is that the words complained of ... were spoken by (the) accused ... Once that is proved the accused will be conclusively presumed to have intended the natural consequences of his verbal acts and it is therefore sufficient if his words have a tendency to produce any of the consequences stated in section 3(1) of the Act. ...*”

However it is also **equally well established** by case authorities that **the alleged actus reus (action) element must be examined in its full context**. In ***Ooi Kee Saik***, His Lordship Raja Azlan Shah J highlighted that “*The dividing line between lawful criticism of Government and sedition is this – **if upon reading the impugned speech as a whole** the court finds that it was intended to be a criticism of Government policy or administration with a view to obtain its change or reform, the speech is safe. But if the court comes to the conclusion that the speech used naturally, clearly and indubitably, has the tendency of stirring up hatred, contempt or disaffection against the Government, then it is caught within the ban of paragraph (a) of section 3(1) of the Act. ...*”

Applying this legal reasoning to section 3(1) of the Sedition Act 1948, an **offence would only be committed if** the conclusion of the reasonable man is that **the words or language that was used naturally, clearly and indubitably, has the tendency to promote feelings of ill will and**

hostility between different races or classes of the population of Malaysia.

However, **if upon reading the impugned speech as a whole it is clear that it was intended to be an appeal to stop the propagation of a religious doctrine or belief among persons professing the religion of Islam as provided under Article 11(4) of the Federal Constitution, and not merely a call to burn Bibles**, can the Attorney General come to any conclusion other than that the speech would be considered “safe” and non-seditious in nature?

Ladies and gentlemen,

That is the effect if we do not read the authorities in full. At the end of the day, even if it is said that it is for the court to decide, the Attorney General still has to decide whether to charge a person. This must be done based on the evidence after a complete investigation. If we go merely on what is being demanded in the media, nine tenths of Malaysians would be charged first and we then leave it to the court to decide. The first to be charged would be the politicians. Should people be charged merely on the basis that police reports have been made? That is not what the Federal Constitution intended in Article 145 in relation to the Attorney General’s prosecutorial discretion.

In Ibrahim Ali’s case, a careful examination of his statement will show that he had very carefully qualified himself in several ways. Firstly, he expressly clarified that his intention was not to create religious strife by stating “*Ini **bukan sentimen ataupun nak menimbulkan kekecohon agama** tetapi ini mempertahankan kesucian agama Islam yang telah*

jelas dalam undang-undang". With these words, how is it to be proved that his words "naturally, clearly and indubitably, have the tendency to promote feelings of ill will and hostility"?

Secondly, he clarified that the offending item was not the Bible generally but only this particular edition of the Bible because it was "*dalam versi bahasa melayu ada kalimah Allah, ada tulisan ayat-ayat jawi*" and "*tulisan jawi yang boleh mengelirukan*". He never said to burn all Bibles. If he had said that, he would have been charged for sedition.

Thirdly, he clarified at the outset that his statement was directed specifically at the group that had distributed these particular Bibles to the students, which included Malay students.

It should also be clarified that when the AGC referred to the failure to satisfy the "intention" element, the AGC was referring specifically to the offence under **section 504 of the Penal Code** and not section 4 of the Sedition Act 1948.

Ladies and gentlemen,

That is the difference of Ibrahim Ali's case. If the case came before a court, all these factors would also need to be considered by the judges too. We cannot run away from that fact.

In relation to the suggestion by certain quarters that Dato' Ibrahim Ali should be charged under **section 505 of the Penal Code**, this necessarily refers to paragraphs (b) and (c) of section 505 which states:

“Whoever makes, publishes or circulates any statement, rumour or report –

*(b) **with intent** to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against public tranquility;*

*(c) **with intent** to incite or which is likely to incite any class or community of persons to commit any offence against any other class or community of persons,”.*

But section 505 also provides the following exception:

*“Exception – It does not amount to an offence within the meaning of this section, when the person making, publishing or circulating any such statement, rumour or report has **reasonable grounds for believing that such statement**, rumour or report **is true** and makes, publishes or circulates it **without any such intent as aforesaid**.”.*

Based on this, would it be wrong to threaten to take action against criminals? The answer is clearly “No”. If the people were distributing Bibles deliberately to Muslims, then their actions would be criminal. Therefore how could Ibrahim Ali be considered to have committed a crime in that context? It should also be realized that with the “intent” requirement under section 505, it would be more difficult to prove a case under section 505 than under the Sedition Act 1948.

Based on the facts of the case and for the reasons explained earlier, the **intention element would not be satisfied for an offence under either section 505(b) or section 505(c).** Further, if there were reasonable grounds for believing that there was an attempt to propagate a religious doctrine or belief among persons professing the religion of Islam contrary to Article 11(4) of the Federal Constitution, the actions would fall within the exception as well.

Challenges from corruption

At the 47th anniversary celebrations of the Malaysian Anti-Corruption Commission on 1 October 2014, His Royal Highness Sultan Nazrin Muizzuddin Shah of Perak provided a stark reminder of the insidious threat that corruption poses to democracy, social order and national harmony. As Tunku Abdu Aziz stated in his recent article, corruption erodes public trust in government; it impoverishes the nation; it retards economic progress and social development; it creates inefficiencies and distorts the decision-making processes. It kills the very soul of the nation and its values and value systems. It leaves in its wake millions of victims.¹⁸

The Carnegie Endowment for International Peace report “*Corruption – The Unrecognized Threat to International Security*” (June 2014) highlighted that systemic corruption has a large bearing on international security.

¹⁸ New Straits Times, 8 November 2014: A royal champion against graft by Tunku Abdul Aziz, Director, International Institute for Public Ethics.

Systemic corruption, whether in the public or private sectors, evokes indignation in populations, making it a factor in social unrest and insurgency. This includes the string of popular uprisings that have toppled governments from Tunisia to Kyrgyzstan and escalated the crisis in Ukraine. This has led to the current international concern of foreign fighters flocking to Syria and Iraq supposedly to help overthrow the incumbent corrupt regimes. It has also inspired the rise of the Islamic State agenda in the Middle East.

At issue is not garden-variety corruption but public-sector criminality and crony capitalist networks where the country harbours endemic corruption that pervades the political system, or when the critical levers of government action are captured – resulting in a veritable repurposing of the State to the material benefit of a few elite networks.

In terms of security threats, the Carnegie report concludes that such high-level organized corruption underestimates the agency of ordinary people – their perceptions of corruption and the increasing tendency of populations to lash out violently against governing systems they can no longer tolerate. Further according to the Carnegie report, every country that harbors an extremist insurgency today suffers from kleptocratic governance. The motivational literature of those extremist movements is littered with references to corruption. As mobile and electronic communications give citizens more access to information and to each other, levels of outrage – and mobilization – are likely to keep rising.

In addition, the Carnegie Report states that the loss of State legitimacy is a crucial factor in many crisis. Although transnational criminal groups attract law enforcement attention, their nefarious activities do not violate public expectations. Citizens have quite different presumptions of their governments. So when governments systematically behave in criminal ways, their legitimacy founders. Profound disenchantment results, and the very fabric of society begins to fray – with unpredictable consequences. The report cites the example of Nairobi residents exchanging grim remarks about the “Shabab bribe” (double the normal rate) that allowed attackers from the terrorist group al-Shabab to infiltrate the Westgate Mall in a September 2013 siege that claimed more than 60 lives.

The Carnegie Report also points out that **corruption** does not fuel these threats alone. It **combines with other risk factors**, such as **ethnic, religious, or linguistic rifts in a population or severe economic disparities, to increase the likelihood of a security challenge.**

Ladies and gentlemen,

Challenges from economic and other disparities and inequalities

Important pre-emptive lessons may be learned from an analysis of the Arab Spring uprisings undertaken by the UK Foreign and Commonwealth Office (FCO).¹⁹

¹⁹ The Arab Spring uprisings, <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmfaff/80/8006.htm> downloaded on 8 November 2014.

The study surmised that the main causes of the social revolution were spurred by a potent combination of economic, social, and political grievances that created fertile grounds for dissent and united disparate groups in opposition to their autocratic systems. The protests as a whole were not ideological and did not seek to impose a particular set of beliefs or order. They united discontented citizens from across political, economic, class and religious divides in opposition to autocratic governments. The figures that united the protestors were ordinary people who had suffered at the hands of the authoritarian systems such as Mohammed Bouazizi, a Tunisian street vendor frustrated by police harassment and humiliation who set himself on fire in protest on 17 December 2010.

The social and political causes included resentment of authoritarian rulers that denied freedom of expression and limited opportunities for participation in civil and political life, long standing “emergency laws”, a malfunctioning or absent justice system, a repressive security state apparatus responsible for myriad human rights abuses, including torture and killings, a desire to re-assert individual and national pride. Furthermore, a feeling of a lack of dignity or an insult to their dignity spurred individual participation in the protests.

Social media was a pivotal platform for the expression of dissent and to organize and connect protest movements. Globalization and ease of travel were also contributory factors. Frustrated young people became acutely aware of their relative deprivation and understood there existed alternatives to the repressive governments under which they lived.

Ladies and gentlemen,

Threats from organized criminal groups

The activities of organized criminal groups also pose a challenge to social order and national harmony, not least because most triads and gangs in Malaysia are today still racially constituted. Hence the crimes perpetrated or the areas these criminal groups control become identified with a particular race. Thus their criminal activities do not just threaten social order but are also a potential sparking point for allegations of racially-based law enforcement actions or racially-based victimization. This was aptly demonstrated during the 2013 crackdown on organized crime where allegations were made that the police operations targeted Indians until the Inspector General of Police produced statistics to show that the numbers of Malays detained during the operations was actually higher than Indians.

Allegations are always easily made. But the danger is when these allegations are made and opinions given without having all the facts.

On this aspect, perhaps the lessons of the violent rioting in Ferguson, Missouri could be instructive. In that case, there were two conflicting versions of the shooting of Michael Brown and there was a clear racial gulf in how the events were perceived. Among the recommendations made were for the police to wear cameras, to work harder to improve relations with the communities they serve, and to have a police force that better represents the racial make-up of the community they serve. It was also recognized that the public are more likely to volunteer

information to officers they trust. More importantly it was recognized that rioting would not solve the problem but on the contrary would make businesses flee.

Another challenge relates to the confidence of the law enforcement agencies themselves to handle organized criminal groups and other serious crimes without the crutch of an emergency proclamation, extraordinary powers under emergency laws and the use of detention without trial.

In this regard it should be understood that the guarantee in Clause (1) of Article 5 of the Federal Constitution, that “*No person shall be deprived of his life or personal liberty save in accordance with law*” presupposes terms of imprisonment imposed by a court of law in accordance with due process. Preventive detention without trial is and always will be an extraordinary measure that must be expressly authorized under Article 149 or 150 of the Federal Constitution.

As amply demonstrated by the law enforcement agencies in the United States, Italy and many other countries, it is possible to take down large, violent organized criminal groups such as the mafia, Cosa Nostra, etc. as well as terrorist groups like Al-Qaeda and Jemaah Islamiyah through diligent, dedicated, targeted investigations and prosecutions.

In 2012 Malaysians entered a new era through the realization of watershed legislative reforms initiated by the Honourable Prime Minister under the Political Transformation Program (PTP) of the 2011-2020 National Transformation Policy (commonly known as the NTP). This led to the revocation of the long-standing proclamations of Emergency on 21

June 2012 and the lapsing of the laws made under its authority such as the Emergency (Public Order and Prevention of Crime) Ordinance 1969. The Internal Security Act 1960, the Restricted Residence Act 1933 and the Banishment Act 1959 were also repealed.

The Emergency (Public Order and Prevention of Crime) Ordinance 1969 was promulgated by the Yang di-Pertuan Agong under Clause (2) of Article 150 of the Constitution and took effect on 16 May 1969, three days after the incidence of the racial riots on May 13, 1969. The preamble to the Ordinance explains the rationale for its enactment as *“the existence of a grave emergency threatening the security of Malaysia”* and that *“the Yang di-Pertuan Agong is satisfied that immediate action is required for securing public order, the suppression of violence and the prevention of crimes involving violence;”*.

We need to read provisions of law together with the justifications for those laws to properly understand why they were enacted, and the purpose they are to serve.

Hence it is clear that the Ordinance was promulgated at a time when Malaysia was facing a situation of grave emergency and extraordinary laws and immediate action were required to restore and secure public order, control and suppress the spread of violence and prevent crimes involving violence. Permit me to illustrate the scope of the problem which necessitated the extraordinary powers for law enforcement under the Ordinance.

According to the official figures in the space of three days, **196** persons lost their lives, **180** were wounded by firearms and **259** by other weapons.²⁰ Further, according to the report by the National Operations Council **9,143** persons were arrested, of whom **5,561** were charged in court.²¹ In the process, **6000** persons were rendered homeless, at least **211** vehicles were destroyed or damaged while **753** buildings were damaged or destroyed by fire.²² Aside from the civil disturbance, widespread looting was also reported. The police were so overstretched to keep law and order that even the police band had to be deployed on peace-keeping duties!

This then was why the Emergency Ordinance was promulgated at that time. Do we still have those conditions today? Would the laws enacted to deal with the problems of that particular period be relevant today?

In more recent times, Malaysia had to defend against an unthinkable attack from the armed forces of the self-proclaimed Sultanate of Sulu. In the aftermath of the Sulu Force attack on Sabah in February 2013, various security measures have been put in place, including declaring eastern Sabah a security zone.

Following multiple kidnappings in 2013-2014 by kidnap for ransom groups and infiltration and incursions by suspected Sulu groups, curfews have recently been imposed in eastern Sabah under the Police Act 1967. Each order may only be made for a limited specified period. This is because this police power was intended to deal with urgent and temporary threats. Each continuation of the curfew order should be

²⁰ Kua Kia Soong, May 13 Declassified Documents on the Malaysian Riots of 1969.

²¹ Tunku, AR: The May 13 Tragedy, National Operations Council 1969.

²² Straits Times, 19 May 1969.

made on a “needs basis” only. Therefore the police are required to address their mind each and every time they seek to renew the curfew order and not fall back into old complacencies. Additional care in taking these security measures is required because it potentially targets those of Sulu descent and could give rise to allegations of racially-based law enforcement action.

It is noted that the spate of crime and terrorist attacks in Sabah and detention of Islamic State terrorists have some quarters calling for “ISA-like” laws to be reintroduced. Members of the public are also reacting on this issue.²³ Suggestions have been made that rather than bringing back the ISA, the government should enact new security laws with elements that are missing in the current legislation such as the Security Offences (Special Measures) Act 2012.

The UK legal framework comprising the Terrorism Act 2000, the Anti-Terrorism, Crime and Security Act 2001, the Prevention of Terrorism Act 2000, the Terrorism Act 2006 and the Counter-terrorism Act 2008 are cited for further consideration as examples of effective laws which combat terrorism without any need to impose arbitrary detention without trial.

The efforts of Eliot Ness and his team of nine “Untouchables” (that is non-corruptible) officers in successfully dismantling Al Capone’s illegal breweries remains legend. The US federal government pursued Al Capone’s illegal activities in two areas: income tax evasion and violations of prohibition. In a six-month operation, they gathered enough

²³ Letters to the Editor, NST, 5 November 2014, R. Paneir Selvam, Institute of Crime and Criminology, HELP University, Kuala Lumpur.

information through surveillance, anonymous tips and wire-tapping to eventually allow the Internal Revenue Service to charge Capone with 22 counts of tax evasion and 5000 violations of the Prohibition Act. Capone was eventually convicted on the five tax evasion charges on 17 October 1931 and sentenced to 11 years in prison and the charges under the Prohibition Act were dropped.

The perseverance of the Italian police also resulted in the arrest and convictions of the murderers of the anti-mafia judges Giovanni Falcone and Paolo Borsellino, killed in revenge for their historic convictions of 119 Mafioso. More significantly, police action turned public opinion and the State against organized crime. This led to the arrest of the “boss of bosses”, Salvatore Totò Riina. Today, the businesses in Sicily are determined to stop paying protection money and to take back their businesses from the mafia.

The Security Offences (Special Measures) Act 2012 (“SOSMA”) was introduced to deal with terrorism and other security offences. It was used in Sabah after the attacks on Lahad Datu. Therefore there is nothing to say that we were not able to deal with the problems of terrorism, etc. in accordance with the existing laws.

Challenge from extremists and returning foreign fighters

At the 10th World Islamic Economic Forum (WIEF) on 29 October 2014, the Honourable Datuk Seri Mustapa Mohamed stated that, “*The threat to world peace and security is not Islam but extremism in the form of intolerance, violence and militancy*”.²⁴

²⁴ The STAR, 30 October 2014.

But the reality is that this is no longer just “the other country’s problem”. In a letter to the Editor, Ng Tze Shiung wrote that, “*There is a growing tendency by Malaysians to label other Malaysians who do not share their views as extremists or advocates of extremism. .. This categorization, however, falls apart because society is not secular and ideology does not predominate life*”.²⁵ That is actually what is happening now and what people are concerned about.

The fear of returning foreign fighters became a reality for Malaysia in November 2014. According to the Royal Malaysia Police at least five militants have returned. Three were arrested while the whereabouts of the others are not known. Official numbers say there are 39 Malaysians involved in Syria. Local intelligence agencies are bracing for attempts by returning militants to spread their terror ideologies and provide training for would-be militants. Other sources claim 52 militants linked to terrorism have been arrested by police this year, many of them linked to the Islamic State (IS).²⁶

The US State Department’s Center for Strategic Counter-terrorism Communications (CSCC) head, Alberto Fernandez, has also emphasized that the new war on terrorism is not being fought in Syria or Iraq but on social media. Recruitment is carried out in various ways to appeal to the sentiments of the subjects, each designed to make the Islamic State (IS) cause attractive. Thus it will be necessary for law enforcement agencies in Malaysia to issue appropriate “counter-messaging” be it on the Facebook or Twitter sites belonging to extremists.

²⁵ The STAR, Letters to the Editor, 31 October 2014.

²⁶ News Straits Times, 8 November 2014.

In this as in so many other areas, law enforcement agencies cannot combat extremism alone. The political will of the Governments (both federal and State) must be categorically declared. Since this is an ideological rather than a pure religious issue, civil society, young leaders, religious leaders and the private sector must also do their part to nullify this threat to social order and national harmony.

It is heartening to note that civil society and the public are leading the way through the Global Movement of Moderates (GMM) and The STAR's "Brave Views and Bold Ideas" campaign. Realizing the need for buy-in from our youth, the GMM has spearheaded the "Voices of Moderation" campaign which targets youths as the next step in driving moderation among Malaysians.²⁷

Challenge from politicians, religious and community leaders and the mass media

Another challenge to social order and national harmony is the role played by politicians, religious and community leaders and the mass media. A comparison between the statements made by the Malaysian group of these creed against those being made by their counterparts in neighbouring countries, really give rise to questions on whether they consider themselves unifiers or the propagators of further dissention and dissatisfaction, be it for political mileage or otherwise.

After the 1969 communal riots, editors took great care to ensure neutral reporting, whether it was about the victim of an accident or a murderer or

²⁷ The STAR, 15 September 2014.

other criminal. Conscious effort was made to immediately dampen any potential spark for a racial crisis. The police and other government agencies handled incidents with awareness and sensitivity. Political leaders stepped up to mediate solutions. There is no better example than the understanding, cooperation and compromising spirit between Tunku Abdul Rahman and his then Cabinet members Tun Dr Ismail, Tun Tan Cheng Lock and Tun Sambanthan. They were the voices of moderation and reason in a roiling sea. Today, many would be forgiven for assuming the opposite to be true.

Challenges in relation to vernacular education and language

It is noted that the issue of education in one's mother tongue and vernacular schools has been a recurring issue because certain quarters view it as hindering the inculcation of unity among students.

When **Article 152** of the Federal Constitution is cited to argue that the "national language shall be the Malay language", it is rarely equally emphasized that there are **two express provisos** as follows:

- "(a) no person shall be prohibited or prevented from using (otherwise than for official purposes), or from teaching or learning, any other language; and*
- (b) **nothing in this Clause shall prejudice the right of the Federal Government or of any State Government to preserve and sustain the use and***

study of the language of any other community in the Federation.” [Emphasis added]

Further, all citizens have the fundamental right to religion, education and property but this is subject to some exceptions (Articles 11, 12 and 13 Federal Constitution). **Article 12** of the Federal Constitution expressly provides that there shall be **no discrimination** against any citizen on the grounds only of religion, race, descent or place of birth **in obtaining an education**.

It is also noted that although **Article 153** of the Federal Constitution imposes a quota restriction for university education, tertiary education opportunities for non-Malays are opened up through local and foreign private schools, colleges and universities. Education abroad is available to those who can afford it and is supported by a specified number of annual Government education scholarships.

The Deputy Prime Minister, Tan Sri Muhyiddin Yassin, has categorically stated the Government’s position on the issue of vernacular schools in his reply in the Dewan Rakyat on 3 November 2014. He declared that the status of vernacular education / schools in the country is recognized and written in black and white in the National Education Blueprint, and this is a fact that has to be accepted by everyone whether they like it or not. The Government is firm on its stand that vernacular schools are part of the nation’s legacy and had been part of the nation’s education landscape since before Independence. However he noted that the Government could not refrain or stop leaders or politicians from giving their views on the issue.²⁸

²⁸ The STAR, 4 November 2014.

In this, it is noted that everybody, including politicians, seem to like to put up their views on the Internet. From a social order and national harmony perspective, it is therefore for such persons, in particular leaders and politicians, to exercise the necessary wisdom and restraint when further broaching this issue.

Challenges on the issue of citizenship

As part of the compromises achieved through the social contract, on Merdeka Day, 31 August 1957, 1.3 million migrant non-Malays were granted citizenship. **Part III of the Federal Constitution which provides for various modes to acquire citizenship does not impose race or religious prerequisites.** Under **Article 119** of the Federal Constitution, **every citizen** regardless of race or religion or community who satisfies the age requirement has an **equal right to vote and to seek elective office** at both federal and State levels.

The voice of an ordinary citizen will serve to illustrate how sensitive this issue is today and how closely developments are being watched because of the recent actions of certain politicians. S. Sundareson, a former registrar of citizens at the National Registration Department in Petaling Jaya from 1969 to 1975 felt moved to clarify the provisions in the Federal Constitution relating to citizenship in response to the Home Minister's statement in the Dewan Rakyat on 29 October that a child's citizenship is determined by the parents' marital status and citizenship.²⁹ After explaining the basis for acquisition of citizenship, he concluded by emphasizing that, "*It is imperative that the provisions in the Constitution*

²⁹ New Straits Time, 31 October 2014.

are not given a narrow interpretation and so deny lawful citizens of their birthright.”.

Ladies and gentlemen,

WHAT WILL BE

Wither the Sedition Act 1948?

It is trite that the law is not the solution to all of society's ills. Charles Samford, eminent Australian ethicist and law professor, propounds that over reliance on the law is unproductive. This is because law does not change, and cannot control, human behavior.

Based on media reports it appears that there is a nationalistic struggle going on about the future of the Sedition Act 1948. Those that advocate its wholesale repeal and substitution with a “national harmony”, “race relations” or “hate-crime” type legislation modeled on the laws in the United Kingdom, Australia, Canada and the United States of America say that it is archaic. However those that fear its repeal will lead to social disorder, anarchy or compromise of the special position of the Malay Rulers, which in turn would jeopardize the Malay Rulers ability to uphold Islam and safeguard Malay/ Bumiputra rights, now argue for its retention.

The Government has stated that it is still in consultations with all stakeholders on the construct of the new legislation, be it a new law or amendments to the existing law. The Government has refused to be

hurried even though the first-mentioned groups insist that the Honourable Prime Minister uphold his promise on 16 April 2012³⁰ to review the Sedition Act 1948.

What then are the options? If there is consensus that contempt of court and criticism of the administration and the Executive no longer warrant being treated as having “seditious tendencies”, perhaps these can be dealt with under separate laws.

My personal opinion is that contempt of court should be enacted as a separate law – a new Contempt of Court Act, modeled on the United Kingdom legislation. But the courts must also be serious in taking action for contempt against itself, that is contempt in the face of the court. In my view also, criticism of the Government is part of democracy and not an issue. If lies are put up, suits for defamation can be filed.

On the other issues, namely the special position of the Malay/ Bumiputra and the special position and privileges of the Malay Rulers, I believe it would be a problem to take these out of the realm of sedition and the Sedition Act 1948. I would like to make it clear that this is because these matters are embodied in the Federal Constitution. Therefore, they will have to be protected under the Sedition Act 1948 unless those provisions themselves are first amended. The position of Islam and the citizenship rights of the non-Malays must also be similarly protected. If non-Malays satisfy the citizenship requirements, so be it. That was part of the social contract. For the rights of Sabah and Sarawak, these were the very basis for the two States to form Malaysia and the rights are contained in the Malaysia Agreement. They should be honoured.

³⁰ Prime Minister’s speech during the tabling of the Security Offences (Special Measures) Act 2012 at the House of Representatives

If this approach is agreed, it would enable the Sedition Act 1948 to revert to dealing with serious threats which undermine the security, sovereignty and dignity of the nation and the special position of the Malay Rulers. It would thus allow sedition to be used as a jealously guarded, ultimate safeguard, for social order and national harmony.

With regard to the **proposed national harmony legislation**, it is noted that on 11 July 2014 at the Attorney General's Chambers Dinner with the Prime Minister, the Honourable **Prime Minister had set out the principles which would guide the formulation of the proposed legislation**.

These principles were **essentially the Prime Minister's guarantee that nothing in the new law would incite hatred and contempt or disloyalty to the Yang di-Pertuan Agong or any Ruler**. The new law would also **proscribe promotion of ill will and enmity among races or different groups of peoples in Malaysia**, and would **prohibit the questioning of any rights, position, privileges, sovereignty and prerogatives as prescribed or protected under the provisions of Part III and Articles 152, 153 and 181 of the Federal Constitution**.

This is a **guarantee that has also been reaffirmed by the Attorney General's Chambers** in taking up the gauntlet to prepare this new era legislation for Malaysia.

Ladies and gentlemen,

CONCLUSION

Kropotkin said that, “*When there is ignorance in the heart of society and disorder in people’s minds, laws become numerous. [People] expect everything from legislation and, each new law being a further miscalculation of reality, they are led to demand incessantly what should emerge from themselves ...*”³¹ In other words, everybody expects laws to change everything. But change can only come from each one of us. It should also be remembered that in all religions, to forgive is divine.

We should learn from the experiences of others. The United Kingdom found that changing societal attitudes is a slow process and legislation is only effective if it is correctly implemented and at the right time. The only way to combat discrimination and prejudice is through education and good behavior from ourselves. Canadian experience has shown that **multiculturalism encourages racial and ethnic harmony and cross-cultural understanding.** **Mutual respect** helps develop common attitudes and **diversity is accepted as a national asset.**

On the way forward, perhaps the Honourable Prime Minister of Malaysia, Dato’ Sri Mohd Najib said it best when he said that, “*There is a need to manage polarities that exist in our society to achieve peace and harmony. I believe the best way to achieve this is through respect,*

³¹ Reproduced in Theory, Justice and Social Change, Christopher R. Williams, Bruce A. Arrigo at page 31.

tolerance, forgiveness and reconciliation.”³² I would add that we should also not think ourselves better or holier than the other.

As the Prime Minister succinctly yet unequivocally further stated , “*When we have a problem, we have to solve it. It is not difficult to achieve solutions to any problems. You do not have to know rocket science to find a formula for harmony. The solution is just rational thinking. ...*”³³

Therefore the solution has always been with us. We have seen it done by our forefathers. We have just forgotten how.

Ladies and gentlemen,

At the end of the day, the choice to preserve our own model of social order and national harmony lies in the hands of the citizens of Malaysia. And it will be our choices that will show what we really are – whether devils or angels. We have to believe that in the long run, Malaysians will do the right thing.

Allow me to conclude with a note of hope in the wise words of Dodi Janki, Spiritual Leader, Brahma Kumaris, who said “*During times of darkness, one lamp is not sufficient; we need lamps all over the place. When one light is lit, than many other flames can be lit from it.*” The Prime Minister alone is not enough. We all need to play our role.

Thank you.

³² Letter from the Honourable Prime Minister of Malaysia, Dato’ Sri Mohd Najib, to Bishop Ng Moon Hing, Chairman, Christian Federation of Malaysia (CFM) dated 11 April 2011.

³³ The Star, 21 October 2014: “PM: Christians in Sabah and Sarawak can continue using the word Allah”.