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Law in a Plural Society: Malaysian Experience

*Address Given by Former Chief Justice of Malaysia, Zaki Azmi**

I. INTRODUCTION

This paper concentrates mainly on how Malaysia, a country composed of many races and religions, creates and enforces its laws in order to sustain the peace that has lasted more than half a century. I have recently retired as a judge, so my view on this subject is from a judge's perspective.

Malaysia is located just north of the equator, about halfway around the world from Utah. It is geographically divided into two main regions by the South China Sea. These two regions are the Peninsula Malaysia and Sabah and Sarawak. Peninsula Malaysia was known as Malaya, but in 1963, the British colonies of Singapore, Sabah, and Sarawak joined Malaya to form the nation known as Malaysia.¹ Singapore also became part of Malaysia but left it in 1965.²

Malaysia's is divided as follows: Malays (50.4%), Chinese (23.7%), Indians (7.1%), and other races (18.8%).³ In terms of religion, about 60.4% of the population is Muslim, and the rest is comprised of Buddhists (19.2%), Christians (9.1%), Hindus (6.3%), and a small minority who still believe in animism and ancestral worship.⁴ All the religions, except those believing in animisms, were actually imported. Islam was introduced in Malaysia by traders and missionaries before the fourteenth century. Christianity was introduced by Christian missionaries and conquerors, and Buddhism and Hinduism by those brought in by the British as workers.

* This speech was originally presented at the Eighteenth Annual International Law and Religion Symposium held at Brigham Young University's J. Reuben Clark Law School on October 2-4, 2011.

1. Bureau of E. Asian & Pac. Affairs, U.S. Dep't of State, *Background Note: Malaysia*, STATE.GOV (Mar. 2, 2012), <http://www.state.gov/r/pa/ei/bgn/2777.htm>.

2. *The Legal System of Malaysia—§1.1 Historical Outline*, in 9 MOD. LEGAL SYS. CYCLOPEDIA 9.200.1, 9.200.9 (2005).

3. CENT. INTELLIGENCE AGENCY, THE WORLD FACTBOOK (2012) (stating that in 2004 Malaysia's estimated population consisted of 50.4% Malay, 23.7% Chinese, 7.1% Indian, 11% indigenous, and 7.8% other).

4. *Id.*

Consequently, today, Malaysia is a melting pot of religions, lineages, and languages.⁵ However, Malay was chosen as the national language when Malaysia gained independence in 1957.⁶ Generally, citizens of Malaysia have varying complexions because the Chinese have fair skin, the Indians have darker skin, and the Malay's skin color is somewhere in between the two. Even when one is aware of the varied complexions of Malaysian residents from different lineages, it can still be difficult to determine the lineage of individuals from East Malaysia (i.e., Sabah or Sarawak) strictly by their appearance because they often have fair skin similar to individuals of Chinese descent, but are in fact of Malay descent. However, the languages spoken at home are usually different for people of different lineage. Consequently, it is generally easy for the people of Malaysian descent to identify the different accents of individuals when they speak Malay (the national language) or English. The types of food and cooking style, as well as the style of dress, also distinguish the different lineages present in Malaysia. The Chinese food is bland, the Indian food is spicy, and the food of the Malays is hot.

In short, Malaysia is the ultimate melting pot. However, despite our differences, the majority of Malaysians agree that we live as one community and benefit from our cultural diversity. We live peacefully together as we respect each other's beliefs and religion and even celebrate each other's cultural festivals.⁷ It is not unusual to find a Mosque, a Church, and both Buddhist and Hindu Temples within the same locality.

II. A HISTORY AND OUTLINE OF MALAYSIA

From the ninth to the thirteenth century, the Buddhist Malay sultanate⁸ of Srivijaya ruled most of the Malay Peninsula. The Srivijaya sultanate was based at the present location of Palembang, Sumatra. The Malays began converting to Islam in the fourteenth century, during the reign of the Hindu sultanate of Majapahit. The conversion to Islam

5. *Pressure on Multi-faith Malaysia*, BBC NEWS, <http://news.bbc.co.uk/2/hi/asia-pacific/4965580.stm> (last updated May 16, 2006).

6. Kumaran Rajandran, *Language Planning for the Malay Language in Malaysia Since Independence*, 2 IRANIAN J. LANGUAGE STUD. 237, 239 (2008).

7. See Raymond L.M. Lee, *The Transformation of Race Relations in Malaysia: From Ethnic Discourse to National Imagery, 1993–2003*, 3 AFR. & ASIAN STUD. 119, 133 (2004).

8. A sultanate is a "state or country governed by a sultan." Merriam-Webster, *Sultanate Definition*, M-W.COM, <http://www.merriam-webster.com/dictionary/sultanate> (last visited Sept. 30, 2012).

spread more rapidly when the Malacca sultanate rose to power under the leadership of a Muslim prince in the fifteenth century.

Malacca is a port located in the Straits of Malacca, which separates Peninsular Malaysia and Sumatra, Indonesia. The Malacca sultanate originated from Palembang, Sumatra. The Malacca sultanate became an international trading port because it was strategically located in the Straits of Malacca, where traders from China, the Middle East, Malaysia, and India passed. As trade increased, more Malays were exposed to Islam, in large part due to their contact with Arab traders. Many Malays converted to Islam, including the sultan. Consequently, as Islam increased in popularity, Islamic laws were applied alongside *adat*, Malay customary law. The sultanate adopted Syariah, with modifications by the customary laws, as the laws of the land.

When the Portuguese conquered and colonized Malacca in 1511, the sultanate ended, and all territories formerly under the Malaccan sultanate became independent states having their own rulers. So today, Malaysia has nine sultanates.⁹ Strangely enough, Malacca, which was the original state that had a sultan, is today without one. This is perhaps because after the Portuguese and the Dutch colonized Malacca, the British took over that territory and combined the territories of Malacca, Singapore, and Penang to form the Colony of the Straits Settlements.

The British came to the Malay Peninsula in the eighteenth century. Sir Francis Light persuaded one of the sultans to hand over an island off the northwest coast of the Malay Peninsula, in the Straits of Malacca. The island, known as Penang, is today a tourist destination of which some of you may have heard. This is where common law made its first footprint in Malaysia. As the years proceeded, the British made arrangements with the Dutch and the local sultans and every state in the Malay Peninsula, including Sabah and Sarawak on the Borneo Island. After the Second World War, locals began to make efforts to gain independence from the British. On August 31, 1957, the territories of peninsular Malaysia gained independence from the British. Later, on September 16, 1963, the colonies of Singapore, Sabah, and Sarawak joined the independent territories of Peninsular Malaysia to form Malaysia.

9. Bureau of E. Asian & Pac. Affairs, *supra* note 1. Malaysia is divided into thirteen states, of which nine have hereditary rulers called “sultans” and four are headed by governors appointed by the King. In addition, the Malaysian Federal Government governs the federal territories of Kuala Lumpur, Putrajaya, and Labuan.

A. Malaysia: A Federation

Now, a brief discussion of the setup of Malaysia's government: Malaysia is a federal state that consists of thirteen states and three federal territories combined under the Federation of Malaysia. Being a federation, every state in Malaysia has its own executive and legislative branches of government, but the Judiciary is established at the federal level and has jurisdiction over all states in Malaysia.

B. Laws in Malaysia

Malaysia has its own Constitution, which acts as the supreme law of the country.¹⁰ At the federal level, Malaysia also has a bicameral parliament. Similarly, the individual states have their own state constitutions and state assemblies. Consequently, laws are enacted by both the federal bicameral parliament and state assemblies. The subject matter of the laws enacted at the federal and state levels differs and is outlined in detail in the Federal Constitution.¹¹ Generally speaking, the scope of Parliament's law-making authority is far wider than that of the state assemblies. The state assemblies enact laws in matters that are administered at the state level, which include land, agriculture, local governments, state governments, and Islam. The laws that are applied in Malaysia are the Civil Common Law, the Syariah Law, and Native Customary Law.

1. Civil common law

Similar to most commonwealth countries, Malaysia inherited the British Common Law system. Malaysia also inherited the jury system and used it for capital punishment cases, but Parliament abolished trial by jury on December 21, 1994.¹² Thus, currently, there are no jury trials in Malaysia.

For the purpose of this speech, I will refer to the Common Law as the Civil Common Law to differentiate it from the Syariah Law. However, it is important to note that Malaysia does not practice Civil Common Law to its fullest extent because statutory law is the main

10. MALAY. CONST. art. IV, § 1.

11. MALAY. CONST. ninth schedule, List I, List II, and List III.

12. S. COMM. ON FOREIGN RELATIONS & H.R. COMM. ON INT'L RELATIONS, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 1994, S. PRT. 104-12, 637-38 (1995).

source of law in Malaysia. Thus, the judges' role is to interpret the law rather than to create it.

The statutory laws in Malaysia apply to all people in Malaysia, irrespective of race or religion. However, of course, there are exceptions. For example, the laws that govern Muslim marriages are not applicable to non-Muslim marriages.¹³

For informational purposes, and not for the purpose of debate, Malaysia still applies both capital and corporal punishment.¹⁴ Children are not subject to this punishment.¹⁵ Capital punishment applies to offenses of murder, kidnapping with intent to murder,¹⁶ discharging a firearm in the commission of a scheduled offense,¹⁷ an act or attempt to wage war against Malaysia or its rulers, and a few others.¹⁸ Corporal punishment applies to offenses such as armed robbery¹⁹ and rape.²⁰

2. *Syariah law in Malaysia*

In Malaysia, the Syariah laws are confined to personal laws as well as laws pertaining to the precept of Islam. The Syariah laws are applied by the Syariah Courts established under each state government. Because the Syariah Courts are established under state government, their jurisdiction is limited to the state where they are established. The Syariah Courts of federal territories are established under the Prime Minister's Department and, similarly, their jurisdiction is confined to the federal territories only. The Civil Common Law Courts do not have jurisdiction in any matter that falls within the purview of the Syariah Courts.²¹ The Syariah Court system is similar to that of the Civil Common Law Courts: there are Syariah trial courts and appellate courts and "all proceedings are commenced by filing a complaint, or making oral complaint to the court."²² Matters falling under the jurisdiction of Syariah courts relate predominantly to personal and family matters of persons professing the

13. MALAY. CONST. ninth schedule, List XI.

14. Act 574 Penal Code, § 396 (2006) (Malay.).

15. *Id.* § 82–83.

16. *Id.* § 364.

17. Act 37 Firearms (Increased Penalties) Act of 1971, § 3 (2006) (Malay.).

18. Act 574 Penal Code § 121.

19. *Id.* § 397.

20. *Id.* § 376.

21. MALAY. CONST. art. 121, § 1A.

22. *The Legal System of Malaysia—§1.4 Islamic Law*, in 9 MOD. LEGAL SYS. CYCLOPEDIA 9.200.35–.39 (2005).

religion of Islam, including succession, testate and intestate, betrothal, marriage, divorce, dower, maintenance, adoption, legitimacy, guardianship, gifts, and trusts. All other matters involving contracts and torts, even where one or both parties are Muslim, fall within the jurisdiction of the civil courts.

Criminal law falls within the jurisdiction of the federal government, except a limited number of offenses relating to Islam. These offenses are only committable by Muslims and consequently fall within the jurisdiction of the Syariah Courts. These offences include laws prescribed as offenses against the precepts of Islam. Examples of these offenses include: eating in public during Ramadan, being found in close proximity with a person of the opposite sex who is not a *muhrim* (close relative), not attending Friday prayers for three consecutive Fridays, and consuming alcohol in public.²³ Other examples are propagating or expounding false doctrine of Islamic teachings, incest, sodomy, and *musahaqah* (adultery between women).²⁴

The Syariah Law in Malaysia is only applicable to Muslims. Thus, it is not an offense if a non-Muslim drinks alcohol in public or eats in public in the month of Ramadan. Other religions, however, do not have their own laws or even court system. Unlike Syariah laws, the doctrines of religions other than Islam are not codified into law. This practice causes disparate consequences for non-Muslim individuals who act contrary to one of their religion's doctrines. For example, adultery is prohibited in both Islam and Christianity. However, in Malaysia, if a Muslim commits adultery, he will be charged and tried before a court. But, if a Christian commits adultery, it is not an offense, as there are no laws prescribed to render it as such.

3. Customary laws

During the colonial control by the Portuguese, Dutch, and British, customary laws of the Chinese and Indian races pertaining to personal matters (especially marriage and divorce) were applied by the colonial courts except when those laws ran contrary to "generally accepted principles of justice and equity."²⁵ However, the customary laws are more accurately classified as race customs rather than religious

23. *Id.*

24. *Id.*

25. *The Legal System of Malaysia—§1.2 Development of the Law*, in 9 MOD. LEGAL SYS. CYCLOPEDIA 9.200.1, 9.200.9–.16 (2005).

ordinances or commandments.

In 1970, the king formed a royal commission to study the feasibility of redrafting the marriage and divorce laws for non-Muslims in light of the United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages.²⁶ This commission allowed for the creation of a uniform law on marriage and divorce for the non-Muslims in Malaysia. A bill was drafted and the parliament had passed it in 1976. This law, now called the Civil Law (Marriage and Divorce) Act applies to all non-Muslims in Malaysia.²⁷

Native Customary Law, however, is still being practiced in East Malaysia, a region that is still largely inhabited by indigenous people. East Malaysia administers Native Customary Law through its own Native Courts. However, technically, East Malaysia is under the purview of the Civil Courts, since the highest appellate court for the Native Court is the Civil Court. Also, the jurisdiction of Native Courts in East Malaysia is limited to matters that do not fall within the ambit of the Common Law Courts and the Syariah Courts. The law clearly stipulates that neither court should interfere with the jurisdiction of any court.²⁸

C. Islam: The Official Religion of Malaysia

As mentioned earlier, the official religion of Malaysia is Islam, as stated by Article 3 of Malaysia's Constitution ("the Constitution").²⁹ At the same time, the Constitution guarantees freedom of religion and propagation of any religion except to persons professing Islam.³⁰ It also, however, empowers legislation of offenses against the propagation of other religions amongst Muslims.³¹ As an exception, this empowerment does not extend to situations where any act is against public order, public health or morality.³² Because Islam is the religion of Malaysia, official activities of the Government are inevitably consistent with the Islamic

26. United Nations Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages, Dec. 10, 1962, 521 U.N.T.S. 231.

27. Act 164 Law Reform (Marriage and Divorce) Act of 1976, (2006) (Malay.), available at http://www.commonlii.org/my/legis/consol_act/lrada1976272/ (last visited Mar. 22, 2012).

28. Act 91 Courts of Judicature Act of 1964, §§ 22, 23, 24, 26, 27, 28, 50, 81, 86, 87 (2006) (Malay.).

29. MALAY. CONST. art. 3, § 1.

30. *Id.* § 11.

31. *Id.*

32. *Id.*

religion. For example, food served at government functions must be *halal*,³³ so alcohol is not served.

Various Malaysian communities agreed to these provisions when the Constitution was enacted at Malaysia's independence. Consequently, the Constitution's provisions regarding religion were intended by the framers of the Constitution to accommodate Malaysia's existing multicultural society. The Constitution was drafted to accommodate the unique demography of Malaysia. The Reid Commission, the commission assigned to draft the Constitution, consisted of judges and legal practitioners from other commonwealth countries. Three political parties spearheaded and supported the independence of Malaysia. These parties represented the three major races in Malaysia, and it was these representatives who suggested allowing religious freedom in Malaysia to ensure that the Constitution would be practicable for the country.

Freedom of religion in Malaysia needs to be restricted in the manner mentioned above because Malaysia's population is extremely diverse. This diverse population makes multicultural issues, including, but not limited to religion, extremely sensitive. Consequently, matters relating to such issues must be carefully handled by the Malaysian Government.

Currently, Malaysia's parliament consists of the House of Representatives and the House of Senate and is made up of multiracial and multi-religious members. As Malaysia practices democracy, the citizens are free to elect whomever they please. Interestingly, Malaysia's Government today comprises the same proportion of Muslims to non-Muslims as does the general population.

Admittedly, however, Islam does have a special position in Malaysia. For example, the Constitution allows the Federal Government and the State Government to provide funding and to maintain any Islamic institutions in Malaysia.³⁴ However, in practice, this privilege extends to the construction of other places of worship.

Another example of the special position of Islam in Malaysia is that the king, also known as the "Yang di-Pertuan," and each of the sultans of the different states are advised by their respective Islamic Religious Council ("the Council"). In the Federal Territory, the Council consists of twenty-two members, who include the Chief Secretary to the Government, the Attorney General, the Inspector-General of Police, the

33. *Halal* means "sanctioned by Islamic law; ritually fit for use." Merriam-Webster, *Halal Definition*, M-W.COM, <http://www.merriam-webster.com/dictionary/halal> (last visited Feb. 22, 2012).

34. MALAY. CONST. art. 3, § 5.

Mufti, and the City Commissioner.³⁵ The Chairman is appointed by the king, who is advised by the minister in charge of the administration of Islam in the Federal Territory.³⁶ These Religious Councils must agree to all laws relating to Syariah before Parliament or the respective State Legislative Assemblies pass them.³⁷

D. A Multicultural Society: Early Segregation and its Lasting Socioeconomic Impact

As mentioned earlier, Malaysia is a multicultural society that consists of three major races and many other ethnic groups. One may wonder how Malaysia can survive peacefully as a multiracial, multicultural, and even multi-religious society. I must say it is not without difficulty. During British control, there was an indirect segregation among the races in Malaysia.³⁸ I use the word *indirect* because segregation was not instituted as a policy, but rather as an economic strategy.

When tin mining was discovered in Malaysia before it gained its independence and even before the First World War, the British and even Malay rulers brought in immigrants from China to work at the tin mines in Malaysia.³⁹ When the British took over mining industries in Malaysia, they allowed Chinese traders and entrepreneurs to control the tin mines. Due to the Chinese traders' effective methods, the mines were profitable and the British collected taxes on those profits. Similarly, the British brought in immigrants from India and Sri Lanka as labor workers in the agricultural sector to grow sugar cane and rubber. The British also used them as civil servants. Consequently, the British gave a lot of advantages to the Chinese and Indians, who supposedly made the greatest contributions to the economy. These advantages included opportunities for business expansion, promotions, and education.

Segregation, for the most part, remained even after independence.⁴⁰ The Chinese were mainly businessmen and lived in the major cities, and the Indians controlled the rubber estates while the Malays subsisted

35. Administration of Islamic Law (Federal Territories) Act, § 10(1) (1993) (Malay.), available at http://www.commonlii.org/my/legis/consol_act/aoilta1993473/.

36. *Id.* § 10(2).

37. *Id.* § 31.

38. See Lee, *supra* note 7, at 122–23 (outlining the history of racial discourse in Malaysia).

39. DAVID PALMER, MICHAEL JOLL & MUZIUM GOPENG, TIN MINING IN MALAYSIA, 1800-2000: THE OSBORNE & CHAPPEL STORY 36 (2011).

40. See Lee, *supra* note 7, at 122–25.

mainly as fishermen and farmers. This created a lot of tension between the races, especially between the Malays and the Chinese. The Malays believed that because they were the main origin race in Malaysia, they were entitled to greater rights and a monopoly of the economy.⁴¹ Racial tensions reached their peak in 1969, when the worst racial clash in Malaysia's history occurred.⁴² The conflict left a black mark on the country's history.

After the racial riots of 1969, the Government formed many policies to ensure that segregation was eliminated.⁴³ An example of such a policy is the New Economic Policy ("NEP") introduced in 1971.⁴⁴ The NEP basically ensured that the Malay and natives of Malaysia (referred to as the *Bumiputera*) have protected rights and a guaranteed share of the Malaysian economy.⁴⁵ Although such a guarantee may appear to disrupt the concept of free trade and a capitalist economy, the NEP is designed as a method of racial integration and a means to abolish poverty in Malaysia.⁴⁶

The NEP, however, does not emancipate the rights of other races. Evidence of this, from an economic perspective, is provided in the 2010 Forbes Top 40 Richest Malaysians.⁴⁷ On this list, there are only ten Malays; the remaining "40 Richest" are Chinese or Indian.⁴⁸ The absolute richest individual on the list is Chinese and the runner-up is Indian. Civil service positions, however, are predominantly held by Malays. This is not because there are restrictions based on race or affirmative action. In my opinion, the disparity in the ratio of civil service positions held by Malays has resulted because the Chinese are very interested in business, while the Malays and other races are not as enthusiastic about it. Furthermore, the Malays represent a large majority of the Malaysian population, so it is natural that civil service positions are held by a greater number of Malays than other races.

41. *Id.* at 125–28.

42. *Id.* at 127–28.

43. *Id.* at 126–28.

44. *Id.*

45. *Id.*

46. *Id.* (quoting Gordon P. Means, "Special Rights" as a Strategy for Development: *The Case of Malaysia*, 5(1) COMP. POL. 29, 59–61 (1972)).

47. Suzanne Nam, *Malaysia's 40 Richest*, FORBES.COM, http://www.forbes.com/2010/05/25/malaysia-richest-robert-kuok-wealth-malaysia-rich-10_land.html?partner=contextstory/.

48. *Id.*

E. Ensuring Racial Harmony Through the Constitution

The Malaysian Constitution provides for the protection of fundamental liberties for the people in Malaysia. The protections related to our discussion today are equality, freedom of religion, and education.

The Constitution provides that everyone is equal before the law.⁴⁹ It further states that there shall be no discrimination based on gender, race, religion, descent, or place of birth unless it is expressly authorized by the Constitution.⁵⁰ The examples of allowed discrimination based on Parliament's efforts to raise the economic level of Malays through the NEP were mentioned earlier.⁵¹

Over the years, a greater portion of the population has become educated, and some people may start questioning these privileges. The drafters of Malaysia's Federal Constitution used the Constitution of the Federation of Malaysia as their basis of drafting.⁵² Malaysia's Constitution guarantees basic fundamental liberties and human rights that are normally found in all other constitutions. However, due to the nature of the Malaysian population, special provisions were made. Article 8 of the Federal Constitution provides equality for all persons before the law.⁵³ But the same article also protects laws relating to personal law and any provision or practice restricting office or employment connected with the affairs of any religion.⁵⁴ Article 8 also exempts laws made for the protection of the aboriginal people as well as rights for the Malays and the Natives of Sabah and Sarawak,⁵⁵ but legitimate interests of other communities are also protected by Article 153 of the Federal Constitution of Malaysia.⁵⁶

Article 153 of the Constitution is often a topic of discussion among

49. MALAY. CONST. art. 2, § 8(1) ("All persons are equal before the law and entitled to the equal protection of the law.").

50. *Id.* art. 8, § 2.

51. *See supra* notes 42–47 and accompanying text (discussing how the NEP entitles the Malay to protected rights and basically a guaranteed share of the economy).

52. *History of the Constitution*, MALAYSIA.GOV.MY, <http://www.malaysia.gov.my/EN/Main/MsianGov/GovConstitution/HistoryConstitution/Pages/HistoryofConstitution.aspx> (last visited Sept. 30, 2012).

53. *See* MALAY. CONST. art. 8, § 2.

54. *Id.* art. 8, § 5 (a)–(b) ("This Article does not invalidate or prohibit— (a) any provision regulating personal law; (b) any provisions or practice restricting office or employment connected with the affairs of any religion or of an institution managed by a group professing any religion, to persons professing that religion . . .").

55. *Id.* art. 8, § 5.

56. *Id.* art. 153, § 8.

Malaysians. In general, it provides for the reservation of special protections for the Malays and the natives of Sabah and Sarawak.⁵⁷ In a way, Article 153 serves as an affirmative action provision for the Malays and the natives of Sabah and Sarawak. Although it provides safeguards for these certain groups (Malays and the natives of Sabah and Sarawak),⁵⁸ at the same time Article 153 prohibits any form of discrimination against other groups that are not specifically protected.⁵⁹ Thus, while Article 153 provides for special treatment of Malays and the natives of Sabah and Sarawak, it is not a blank cheque that can be used by the Government to discriminate against minority races in Malaysia. Article 153 also provides that the king shall safeguard the legitimate interests of other communities.⁶⁰ Among these safeguards are prohibitions on Parliament from restricting trade and business solely to the Malays and the Natives of Sabah and Sarawak and from depriving any person the rights, privileges, permits, license, or scholarships he or she already enjoys.⁶¹ In practice, however, the Government has, of late, been more liberal in giving scholarships to non-Malays.⁶²

The Constitution of Malaysia allows Parliament to make laws imposing restrictions on the freedoms of speech, assembly, and association on the grounds of security and public order.⁶³ In particular, it allows the making of laws prohibiting the questioning of any matter, rights and statuses, positions and privileges, sovereignty, or prerogative established by Articles 152, 153, and 181. Article 152 refers to Malay as the national language while allowing the teaching and learning of other languages.⁶⁴ Article 153, as stated previously, relates to the rights reserved for the Malays and natives of Sabah and Sarawak.⁶⁵ Article 181 relates to the protection of sovereignty, prerogatives, powers, and

57. *Id.* § 1. (“It shall be the responsibility of the Yang di-Pertuan Agong to safeguard the special position of the Malays and natives of any of the States of Sabah and Sarawak and the legitimate interests of other communities in accordance with the provisions of this Article.”).

58. *Id.* § 2.

59. *Id.* § 8.

60. *Id.*

61. *Id.* § 9.

62. See Julia Zappei, *Malaysia to Give More Scholarships to Non-Malays in Move to Mollify Ethnic Minorities*, MALAYSIA TODAY (May 30, 2008), <http://www.malaysia-today.net/archives/archives-2008/8136-malaysia-to-give-more-scholarships-to-non-malays-in-move-to-mollify-ethnic-minorities>.

63. MALAY. CONST. art. 10, § 2(b).

64. *Id.* art. 153, § 1.

65. See *id.* § 9.

jurisdictions of the rulers.⁶⁶

Pursuant to these provisions, Parliament passed the Sedition Act in 1948 because of the sensitivity of certain aspects of the communities within Malaysia.⁶⁷ The Sedition Act establishes regulations that may not be necessary in more developed nations such as those in the West. Among other prohibited actions described as having a seditious tendency, the Sedition Act prohibits actions that “promote feelings of ill will and hostility between different races or classes of the population of Malaysia,”⁶⁸ as well as acts “to question any matter, right, status, position, privilege, sovereignty or prerogative established or protected by . . . Article 152, 153 or 181 of the Federal Constitution.”⁶⁹

Certain issues relating to race and religion, which may be quite liberally accepted by members of more developed countries, are sensitive in Malaysia. Many Malaysians of the older generation have not forgotten the terrible racial riots that the country went through in 1969. Since then, there have been minor incidents involving communities of different religions. The Sedition Act helps protect against such racial incidents by prohibiting any remarks or acts that would cause any misunderstanding amongst races.

Some so-called more liberal-minded Non-Governmental Organizations (“NGOs”), which are made up of the younger generations, would like more freedom of speech in Malaysia while others feel that local communities are not yet ready for such expanded freedoms. Those in favor of liberalization always refer to England and America as precedents for expanded individual rights. I do not wish to express any views on this. As judges, our duty is to interpret and apply the laws. It is left to the legislature to decide whether or not to change the statute books.

F. Malaysia’s Courts Today

While the Syariah courts hear only family matters of Muslims, the jurisdiction of the civil and criminal courts (collectively “the Judiciary”) is much wider. The Judiciary must tread carefully to ensure that its decisions balance the interests of the different communities. However, it cannot go beyond what is provided by law. Sometimes the Judiciary has

66. *Id. art.* 181, §§ 1–2.

67. Act 15 Sedition Act of 1948, (2006) (Malay.).

68. *Id.* § 3(1).

69. *Id.*

been accused of trying to escape from its responsibilities. As a former judge, I can assure that this is not the Judiciary's intention. I believe the duty of the courts is to apply the law and the Judiciary attempts to properly do so no matter how distasteful the result may be to a particular group. It is the duty of the Legislature to amend the law if it considers that the Judiciary's decision is not in the interest of the nation. Under the original provision of the Constitution, it was held by the civil court that it had jurisdiction to override the decision of Syariah courts; this resulted in a conflict of decisions between the two courts.⁷⁰ To overcome this, Parliament deemed it necessary to amend the constitution and provide that civil and criminal courts cannot interfere with decisions of the Syariah courts.⁷¹

III. CONCLUSION

In conclusion, in a nation that is multireligious, multicultural, multilanguage, and different in so many aspects, the underlying principle that sustains peace and harmony is the concept of give and take. Human beings embrace their religious and cultural beliefs and often are willing to die for those beliefs. Thus, we must respect everyone's religious beliefs and culture.

Malaysia has proven that pluralistic views can exist side by side as long as they are mutually respected. Rules that restrict inappropriate behavior must be enforced to ensure harmony in society while simultaneously protecting individuals' fundamental liberties.

70. *Myriam v. Mohamad Ariff*, 1 MLJ 265 (1971) (Malay.); *Mohamad Habibullah bin Mahmood v. Faridah bte Dato' Talib*, 1 CLJ 264 (1993) (Malay.).

71. MALAY. CONST. art. 121 § 1.

