GUEST LECTURE BY

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"JUDICIAL INDEPENDENCE IN THE FEDERALIST SYSTEM: CONSTITUTIONAL JUDICIAL REVIEW ON THE POWERS OF FEDERAL PARLIAMENT AND STATE LEGISLATURES"

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The Right Honourable the Chief Justice of Singapore, Sundaresh Menon; Honourable Judges; distinguished guests, ladies and gentlemen,

Assalamualaikum warahmatullahi wabarakatuhu and a very good day.

INTRODUCTION

[1] I would like to extend my gratitude to the Singapore Academy of Law for inviting me to deliver this lecture at such a prestigious function. It is truly humbling to be included within such an esteemed group of lecturers and to address such a distinguished crowd.

[2] What is most humbling is that the learned Chief Justice Sundaresh Menon took pains to hand-deliver the invitation to me with his kind insistence that I should deliver it even if at the time I deliver it, I am no longer the Chief Justice of Malaysia. This is just but one of the many

examples of his magnanimity and kindness and it is truly heartwarming that he should have such confidence in me. I shall attempt to do my best.

[3] The topic that I have been assigned reads: *'Judicial Independence in the Federalist System: Constitutional Judicial Review on the Powers of Federal Parliament and State Legislatures'*. A large part of this lecture resonates with an earlier lecture I delivered before an earlier audience for an online event hosted by the Global South Network (GSN). As such, some parts of that lecture are reproduced here as the topic is not only similar but equally significant.

[4] While the topic touches upon judicial independence, I find that mere discussions on the subject and simply uttering its values serves little purpose if they are said and not translated into practice.

[5] As such, I will (in this lecture) refrain from engaging in more doctrinal or theoretical concepts of what judicial independence is, and instead, I shall attempt to weave that aspect of the topic into the larger posers of this discussion such as constitutional supremacy, constitutional judicial review and the demarcation of powers in a federalist system.

[6] Accordingly, the flow of this lecture shall be in three parts.

[7] In the first part, I will attempt to provide a short historical lesson as a means to set the stage for the context of how our legal system works.

[8] The second part shall address my views on the importance of Article 4(1) of the Malaysian Federal Constitution ('FC') on constitutional supremacy and it is to be read with Article 121(1) which deals with judicial

power. Both these provisions are the central pillars of constitutional judicial review in Malaysia.

[9] The third and final part shall seek to address Malaysian federalism and its intersection with constitutional judicial review.

THE MALAYSIAN LEGAL SYSTEM – BRIEFLY

[10] Malaysia is a Federation and so we are more appropriately known as the Federation of Malaysia. Our two main territories comprise West Malaysia also known as either Peninsular Malaysia or Malaya; and East Malaysia, or the two territories of Borneo that are respectively known as Sabah and Sarawak. West and East Malaysia are divided geographically by the South China Sea.

[11] By 1957, specifically on 31 August 1957, West Malaysia, or Malaya as it was then known, successfully declared independence from the British. There was no violent bloodshed or revolution. What happened was that political elites from the Malay and other multicultural parties together with the Sultans of the Nine States and the British rulers in the years between 1948 and 1957 successfully negotiated a written constitution for Malaysia premised on a social contract.

[12] That there was a social contract is a fact of history and it is prevalent in our FC. As for its existence, there are social and political reasons. As a result of nearly 168 years of British influence, Malaya had seen an influx of immigrants from China and India and other surrounding Asian territories many of whom today are proud Malaysians. But at the time, there was fundamental shift in the local population's demographics, political and economic imbalance between the Malay population and the immigrants,

and the fact that we had nine entirely separate systems of governance in the nine different monarchies.

[13] In order to reconcile these fundamental differences, the Government of the United Kingdom and local leaders agreed to form a multinational commission to develop a written constitution for Malaya. This commission is popularly known as the Reid Commission.

[14] Premised on the very important terms of reference of the Reid Commission, the Malayan Constitution included and still includes the following foundational stipulations, and in no particular order of importance, they are:

(i) A declaration of Islam as the official religion of the Federation but with a guarantee of freedom of religion for all other faiths;

(ii) The guarantee of a partial retainment of the Syariah Courts and continued application of Islamic law for Muslims only on certain matters limited to personal law and custom;

(iii) A federal form of government meaning governments at both federal and State governments with central bias of power in the Federation;

(iv) The formation of a democratically elected bicameral legislature;

(v) The preservation of the nine pre-existing Sultanates who would continue to reign as Heads of States in their respective States and reconciled at the federal level by establishment of

the position of Yang-Di Pertuan Agong ('YDPA') or King of Malaysia elected rotationally among the nine Sultans for a period of 5 years per term as the Head of State at the federal level;

(vi) Bahasa Melayu is the National Language;

(vii) A constitutional guarantee of fundamental liberties or own Bill or Rights;

(viii) Provisions on citizenship premised on a fusion of *jus soli* and *jus sanguinus*; and

(ix) The creation of the three arms of Government namely, the Executive, the Legislatures and the Judiciary.

[15] These terms saw the creation of a Malayan nation that practises Parliamentary democracy with a constitutional monarchy. Most notably, the FC contains the Ninth Schedule that in turn houses three Lists. The First List enumerates expressly but broadly the exclusive powers of legislation of federal Parliament. The Second List does the same in respect of the exclusive powers of legislation of the State Legislatures while the Third List details in the same way mutual powers of legislation.

[16] At this juncture, I must highlight again that unlike the constitutions of say India or Pakistan that were drafted by their own elected representatives at the time, the Malayan Constitution was developed by an unelected commission which comprised directly and indirectly the nine Sultans, local political elites who did the initial work and later consulted the public through open sessions. The terms of reference that now form

the basis of our FC, like the terms of a binding contract, were agreed by all stakeholders as being the conditions that would exist in an entirely self-governed and self-sustaining nation bearing in mind the historical impact of Malaya's demography after more than a century and half of colonisation.

[17] More to the point of the topic of my lecture, a major and central feature of our FC constitutes the formation of an entirely and completely independent and centralised Judicial arm of Government. I use the phrase "entirely and completely independent" because Malaysia adopted the Westminster form of Government. What this means is that members of the Executive branch of Government are not directly elected. They consist of members of the Parliament that are mostly elected to its lower House (Dewan Rakyat) and some members who are appointed from the upper House (the Dewan Negara).

[18] Thus, like the Westminster system, the Executive and federal legislative branches are fused. The Prime Minister is a person elected to the House of Representatives and who is appointed by YDPA and who in the YDPA's judgment is likely to command the confidence of the majority of the members of that lower House. The rest of the Cabinet is then also appointed by the YDPA but on the binding advice of the Prime Minister.

[19] It works the same way at the State Level and their respective State Governments. They have their own respective State Legislatures whose members are elected. One such member is then appointed by the Sultan (or Governor of a State without a Sultan) to be the Chief Minister or Menteri Besar or Premier. The title is the same in principle but changes

only in name depending on the State. The Chief Minister/Menteri Besar/Premier then appoints his own State Cabinet known as the Exco.

[20] As far as the Judiciary is concerned, it exists only at the federal level. While there are branches of the Superior and Subordinate Courts in the various States, they are all coordinated, operated and funded federally. Their powers extend to interpreting, applying and enforcing all federal and State laws, and for the Superior Courts, this includes the FC.

[21] And because we adopted the British system in large part, our Courts follow the common law system wherein judicial precedents carry the force of law as opposed to just binding the parties in that case. We apply *stare decisis* in that precedents from higher Courts bind the lower Courts. Cases from the common wealth including from the United Kingdom ('UK') especially in common law heavy areas such as tort law are frequently cited and applied.

[22] In any case, all the fundamental features that I cited to you just now, I deliberately left out one because it forms the basis of the lecture. And it is that under the terms of our FC which was negotiated politically to condition the formation of Malaya, it was agreed that the FC would reign supreme. The most foundational clause of the FC from which all other clauses flow is therefore Article 4(1), which reads:

> "This Constitution is the supreme law of the Federation and any law passed after Merdeka Day which is inconsistent with this Constitution shall, to the extent of the inconsistency, be void.".

[23] Merdeka Day refers to Independence Day i.e. 31 August 1957.

[24] It is to be noted that in 1963, the Federation of Malaya was renamed to the Federation of Malaysia upon the admission of the three territories two of them now comprising East Malaysia, that is to say, the two Bornean territories of Sabah and Sarawak. The Malaysia Act 1963 was passed to cater for the admission of these territories.

[25] The third of these territories was Singapore who also joined Malaysia in 1963. However, two years later in 1965, Malaysia and Singapore parted ways and Singapore became its own sovereign nation with its own written constitution from then on.

[26] In the formation of Malaysia, there was no fundamental change to the basic features of the FC especially to Article 4(1) but just that additional clauses were inserted to cater for additional legislative powers for the Bornean States and institutional protections of their sovereignty.

[27] And thus, the main discussion of this topic, Article 4(1) that enshrines constitutional supremacy remains extant and alive right from 1957 until this very day.

[28] Before I delve deeper into the notion of constitutional supremacy, I must first say a few words on its counterpart, that is, Parliamentary supremacy. This is because in almost every constitutional adjudication in Malaysia, the Courts are often reminded and do often themselves reiterate the words of our former erudite and revered Lord President Tun Suffian who in the case of *Ah Thian*, said, in no uncertain terms, and I quote:[1]

[1] *Ah Thian v Government of Malaysia* [1976] 2 MLJ 112, at p. 113.

> "The doctrine of the supremacy of Parliament does not apply in Malaysia. Here we have a written constitution. The power of Parliament and of State Legislatures in Malaysia is limited by the Constitution, and they cannot make any law they please.".

PARLIAMENTARY VS CONSTITUTIONAL SUPREMACY

[29] It is important to understand as I stated earlier, that Malaysia does not just apply the common law form of judicial administration, but we have also throughout history, applied common law decisions including English decisions. This is to no one's fault considering that before and for many years after Independence, almost all our Judges at all levels were English-trained and were steeped in English tradition, thinking and ideologies. This posed a significant problem insofar as constitutional and administrative law are concerned because, in my view, it allowed English law and ideology to creep into our legal system beyond the written words of our own FC. Specifically, notions of Parliamentary supremacy.

[30] As such, in appreciating constitutional supremacy here in Malaysia, we must first understand its diametrically opposed concept of Parliamentary supremacy.

[31] In my own words, Parliamentary supremacy simply means that Parliament is the ultimate constitutional authority in that nation. The most obvious and applicable example is the United Kingdom ('UK').

[32] The reason why I gave that brief history earlier is to demonstrate to you that history plays a monumental role in the development of a constitution and constitutional theory. So, it is important to understand

how Parliamentary supremacy came about in the British context albeit in a very simplified manner.

[33] Britain was once a heavily monarchic nation where the King was considered sovereign and supreme, and the source of all law and order. The King's words and edicts were law and even formed the basis of religious beliefs and customs. British Kings were often influenced by the "nobles" comprising aristocrats and aristocratic families. Early on, the lay folk or commoners had little influence in governance. They were mostly a workforce and a source of taxation and war resources.

[34] Eventually, aristocrats and lay people alike started to revolt mostly due to taxation and policy differences. Over the course of centuries, the sovereign Kings and even Queens started to lose power to the people they governed in the formal body that became Parliament. Such an institution was a major organ to check and balance and even in some cases, regulate the acts and proclamations of the sovereign. Eventually, Parliament became the very embodiment of the People and all other organs of State including the Monarchy were rendered subordinate to it. Parliament stands as the ultimate authority even standing above the Judiciary and the Executive branches.

[35] That is why in the UK, it is principally Parliament and not anyone else that is both supreme and sovereign. Parliament makes and unmakes laws even at the constitutional level. An example, in this regard, would be apposite to illustrate how Parliament stands even above the Judiciary by reference to the old practice of its passing of Acts of Attainder.

[36] An Act of Attainder is essentially a law that Parliament can pass to legislatively convict a person as guilty for any offence without a trial. It is

a means to completely bypass any judicial trial or judicial deliberation. Their existence is not imagined or fictional.

[37] Acts of Attainder eventually fell out of favour in the UK and by 1870, Parliament formally and effectively abolished the use of such legislation by passing the Forfeiture Act 1870. Yes, you will notice that it was Parliament that abolished its own reliance on such legislation. It was not by reason of a Court decision.

[38] You will also notice that this methodology effectively spurred the direction of legal development in the UK where the Courts there are very different in that they are subordinate to Parliament. It is probably where the saying stems that the Courts are tasked with interpreting law and not making law – which is strictly and sometimes sacredly a Parliamentary prerogative. English administrative law is still influenced in this way in that judicial decisions act as checks and balance against executive power vis-à-vis challenges against legal provisions but you do not otherwise see the English Courts striking down Acts of Parliament. It is simply because the constitutional theory of the UK does not recognise such a concept.

[39] The only instance, to my knowledge where we can see such a departure is when the UK was a member of the European Court of Human Rights. At that time, section 4(1) of the Human Rights Act 1998, itself passed by the UK Parliament in ratifying the relevant treaty, allowed the English Courts to pass declarations of invalidity. Such declarations however, only declared Acts of Parliament incompatible with certain international human rights instruments but did not render such Parliamentary Acts or their provisions invalid or being struck down. In this sense and putting it rather bluntly, such declarations of invalidity only

served, at best, as judicial suggestions to Parliament on directives or orders. As such, Parliament could choose not to comply and this would not render such acts legally questionable at least at the national level. The international level is a different story.

[40] I must be quick to emphasise here that my lecture is not intended to criticise Parliamentary supremacy in any way. Neither am I saying that it is a dysfunctional or inapplicable constitutional modality. My point here is to highlight very briefly how it arose in UK's historical context and how it works in paving the path to the discussion on why constitutional supremacy, at least in the Malaysian setting, is poles apart.

[41] The British Empire was a powerful force that slowly dismantled over the course of centuries. You will notice, and I state this simply as a historical fact, that many of its former territories did not choose to adopt its form of governance. The UK does not comport to Baron de Montesquieu's notion of the doctrine of separation of powers. In fact, many States if not all of them that declared independence from the British did not adopt the concept in its purest form. The most standout example of this is the United States of America ('**US**') the nation which is one of the only former British territories that adopted Montesquieu's version of complete separation of powers.

[42] For the US, not only did they adopt a written constitution, they constitutionally enacted three entirely independent federal branches of government being the Executive (lead by the President), Congress, and the Supreme Court. Historically, the Americans were so opposed to any form of British rule or influence that they strongly embraced notions of republicanism and direct representation in government.

[43] For the purposes of this lecture, the most notable feature of the American Constitution is that part that pertains to the US Supreme Court. I must start by stating that while the US does not have an express supremacy clause, they have applied their constitution in that way beginning the landmark and celebrated decision of the US Supreme Court in *Marbury*.[2]

[44] Reverting to the UK for a moment, I highlighted how the Courts there typically interpret legislation. They do not otherwise question their validity. In light of the igniting spark that was *Marbury*, that is completely not the case with the US. Here, we can see that the Courts, or at least the US Supreme Court as the highest federal judicial authority is by its constitution a co-equal branch of Government that can directly and is indeed, constitutionally obliged to directly check and balance the power of both Congress (Legislature) and the President (Executive). The force of the power is founded on the idea that it is the US Constitution, a written document, that is supreme and not any of these three arms of Government either individually or separately.

[45] The facts in *Marbury* are not directly relevant but I will narrate the gist of it to prove my point. In that case, the issue was simply that the petitioner sought a writ of mandamus against the respondent but he did this by filing a petition in the original jurisdiction of the Supreme Court. Per the US Constitution, such a feat was not constitutionally possible but this was made possible by, An Act of Congress, the Judiciary Act of 1789, that sought to enlarge the jurisdiction of the Supreme Court to grant mandamus in its original jurisdiction. The theory of Chief Justice Marshall

[2] *Marbury v Madison* [1803] 1 Cranch 137.

and his Supreme Court was quite simply that while the petitioner was on the facts entitled to mandamus, he ought not to have filed it in the Supreme Court's original jurisdiction. As the Judiciary Act of 1789 purported to enlarge the Supreme Court's jurisdiction against the US Constitution, it was declared void and invalid. And thus, while Marbury was entitled to the mandamus on the facts, it was effectively deemed illegal to have granted it to him by virtue of the fact that the US Supreme Court did not have jurisdiction to grant it.

[46] By such a ruling, the Marshall Court directly and effectively declared that the US Constitution is supreme and any law that is passed by Congress in violation of it is liable to be struck down.

[47] The *Marbury* decision, a powerful one particularly because it was unanimous, is widely regarded throughout history as establishing judicial review. I cannot emphasise enough that *Marbury* was decided within the context of the US Constitution absent an express supremacy clause.

[48] *Marbury* is the first rational step in my constitutional analysis because it is the first emphatic judicial decision that established a precedent for when an independent judicial arm of government may effectively annul and defy a statute passed by a democratically elected body.

[49] The second step in my analysis and I think which presents as a more interesting scenario beyond the annulment of ordinary laws is the question whether can the Judiciary, in a constitutional supremacy, also annul, invalidate or strike down laws that seek to amend the written constitution.

[50] The argument in the context of a legal ecosystem within which the constitution is supreme is that the constitution is always subject to amendment as authorised by its own provisions and as such, anything it dictates can be undictated by valid constitutional amendments.

[51] This scenario is not imagined or theoretical as it actually occurred in another notable and comparable jurisdiction: India in its landmark decision of *Kesavananda*.[3]

[52] Like Malaysia and the United States who were once British colonies or territories, so too was India as its Crown Jewel. As such, a large bulk of the Indian legal system is heavily derived from English law, in particular, English common law. The Indian Peoples however drafted their own written constitution in their struggle to gain independence from their former colonial masters. Like the United States, India's constitution is written but does not espouse an express clause on constitutional supremacy.

[53] India was directly confronted with the situation that I presented earlier whereby the Supreme Court was called upon to decide whether constitutional amendments may be struck down. In a majority decision of 7-6, the Supreme Court created the basic structure doctrine or '**BSD**' that boldly declared that not only must the Indian Courts strike down legislation that is inconsistent with the Indian Constitution but that it may also strike down any constitutional amendment passed by them if such amendment destroys the basic structure of the Indian Constitution.

[3] *Kesavananda Bharati v State of Kerala & Anor* AIR 1973 SC 1461; (1973) 4 SCC 225.

[54] Here, we not only have a scenario wherein ordinary laws are struck down, but a constitutional amendment no less.

[55] Detractors of the *Marbury* decry the decision for effectively establishing judicial supremacy. You can then only imagine how intense the degree of criticism was when it was suggested that even laws that seek to amend the very document said to give the Judiciary those powers may be struck down.

[56] Consistent with historical defences against the concept, I too take the firm and unyielding position that any suggestion that constitutional supremacy is the same as judicial supremacy is either paranoia, a failure to understand constitutional supremacy, and that a defence of constitutionalism by a constitutionally anointed body cannot be imagined as judicial supremacy. And if the notion of constitutional supremacy and its implications remains a subject of debate in jurisdictions where there is not even an express supremacy clause, how bad then can it be in in Malaysia where there is such an express declaration of supremacy?

[57] In developing the context for the Malaysian scene, I must first perhaps state my observation on the wholly imagined demon that is judicial supremacy.

THE FEDERALIST SYSTEM, CONSTITUTIONAL JUDICIAL REVIEW AND THE UNFOUNDED FEARS OF JUDICIAL SUPREMACY

Judicial Power

[58] Critics of *Marbury* and the principles it espouses as well the BSD established in *Kesavananda* argue that establishing judicial review in that way effectively paves the way for judicial supremacy. Especially in relation to BSD, the argument appears to be centred on how unelected judges are given a blanket and exclusive power to determine what constitutes a basic feature and accordingly, judges can hold the elected Legislature or even the nation ransom to it.

[59] Though there appears to be logical concern behind it, I would argue that such logic is itself principally misguided. Allow me first to address the perceived logic behind it and then I will hope to address why I think it is hopelessly misguided and unfounded.

[60] The notion behind most if not all common law countries that have written constitutions including Malaysia, the US and India is that they are founded on democracy. The idea here is that they all at one point in their histories secured independence from the British. Therefore, concepts such as self-determination, self-reliance and self-rule are pivotal to their existence. The fact that elections take place and representatives of the People determine the law should mean that these 'representatives' should have the final say of the law through Parliament or Congress.

[61] Indeed, that is the idea in the United Kingdom. We see Parliament, as the final constitutional authority that can make and unmake laws. But, evidently, when nations such as the US, Malaysia and India secured independence, they did consider UK's model of governance but chose instead to individually adopt written constitutions. What their constitutions have in common is that such documents provide the legal basis for the existence of their elected legislative bodies.

[62] Evidently, these nations were convinced that as time flows, the Peoples of the nation also change. What should remain constant but organically evolving is their own constitution that formed the basis of their nations in the first place. The constitutions these nations developed in fact directly imposed certain fetters on their own legislatures such that certain laws cannot be passed or that laws must be passed subject to certain minimum standard of legality including adherence to fundamental rights.

[63] Take for instance Article 1, Section 9, Clause 3 of the US Constitution which expressly dictates that '*No Bill of Attainder or ex post facto Law shall be passed*'. A direct inclusion of such a clause in the US Constitution clearly showed their disdain for such legislation. On a wider level it displays an institutional distrust against even an elected Congress by placing a higher limit against them from ever passing such legislation by which elected representatives can take the role of an independent adjudicatory body to convict and punish individual crimes through legislation. The fact that there is such a fetter against Congress clearly epitomises the fact that *Marbury* was correct to find that the US Constitution is supreme.

[64] The UK system is not necessarily flawed. Both the US and UK constitutional systems exhort democracy. The issue with this, with declaring Parliament supreme, is that it also adds to the fold politics and political whims. Thus, the change of constitutional norms and conventions is governed solely by political process with no independent institutional judicial oversight or redress.

[65] The reliance on a constitutional method that prioritises constitutional supremacy in effect renders the constitution free of political interference and that even the elected legislature is confined in its powers to legislate. Add to this equation the fact that the Courts and its individual judges are also public entities who answer to the public and you have essentially and theoretically removed politics from the equation in favour of an independent body that can interpret and enforce the terms of the written constitution unimpeded by the political process.

[66] These notions of judicial power and independence, you will notice are nearly the same in Malaysia and perhaps even here in Singapore.

[67] Like I mentioned earlier, Article 4(1) renders the FC supreme and any law passed after Merdeka Day that is inconsistent with it is, to the extent of the inconsistency, void. And as also noted earlier, Malaysia is a federal system but very much the reverse of the United States in the primary power, even legislative power, is centred in the Federation with lesser power to the individual State Governments.

[68] In this regard, the FC in its Ninth Schedule contains three main lists that respectively enumerate the legislative powers for firstly, Parliament, secondly the State Legislatures and thirdly, their Concurrent powers of legislation or powers upon which both Federal and State legislatures can make laws. There is then also a Supplemental State List for additional powers of legislation for the East Malaysian territories of Sabah and Sarawak.

[69] Who then should have the power to supervise the compliance of these legislative bodies with their respective legislative powers? Again, seeing as none of them are supreme like the Parliament in the UK, then

following the US example, the body that must undertake such supervision are the Superior Courts – in accordance with Articles 4(1) and 121(1) of the FC.

[70] In this regard, I must first address the controversy that has plagued our nation regarding the role of the Courts.

[71] In this regard, I would say that Malaysia constitutional scene did not achieve full bloom until the year 2017, that is at least 60 years after independence. We must also consider that Article 4(1) remains intact and in pristine form since the very inception of the Federation of Malaya and later Malaysia. You would therefore be correct to think that the full realisation of Article 4(1) only 60 years after its inception might have been too long and you might be correct.

[72] The transcendent shift in 2017 that I am referring to is the unanimous decision of the Federal Court in a case called *Semenyih Jaya*.[4] In Malaysia, like most other jurisdictions, we have an Act of Parliament called the Land Acquisition Act 1960 or the 'LAA 1960' which allows the Government to forcibly acquire land subject to them making adequate compensation to the person from whom the land was forcibly acquired. Naturally, in many cases the aggrieved party challenges the adequacy of the compensation.

[73] The issue in *Semenyih Jaya* was that a provision of the LAA 1960 stipulated that any High Court Judge who shall determine the adequacy of compensation for acquisition shall be assisted by two lay and

[4] *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat and another case* [2017] 3 MLJ 561.

essentially non-judicial assessors and that the determination of those assessors shall bind the High Court Judge. Those challenging the provision argued that the High Court was, by that provision, effectively rendered into a rubberstamp in violation of the doctrine of separation of powers. After a lengthy analysis of applicable constitutional provisions, the Federal Court held that the impugned provision of the LAA 1960 was unconstitutional and struck it down.

[74] Under the terms of the FC as is accepted everywhere else in the Commonwealth, the Judiciary is an entirely independent organ of Government tasked with making judicial determinations. Any person can therefore appreciate the clear and obvious outcome in *Semenyih Jaya* in that by confining the High Court to external adjudicators and removing all source of judicial determination unduly restricts judicial power and renders that provision of the LAA unconstitutional. As you can probably guess, the issue in *Semenyih Jaya* was therefore not simply just the legal validity of the LAA 1960 provision but something much larger. And to illustrate that, I must step away from that decision and highlight the bigger problem that plagued the Courts at that time.

[75] Prior to the events that occurred in 1988, Article 121(1) of the FC, which deals with the establishment of the Superior Courts in Malaysia, read, in relevant part, as follows:

> "… the judicial power of the Federation **shall be vested** in the two High Courts … and the High Courts … shall have such jurisdiction and powers as may be conferred by or under federal law.".

[76] In 1988, Parliament passed the Constitutional (Amendment) Act 1988 [*Act A704*] to among other things, amend Article 121(1). The new provision which subsists to this day, reads as follows:

> "There shall be two High Courts of co-ordinate jurisdiction and status... and such inferior courts as may be provided by federal law; and the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law.".

[77] This amendment did two things. First, it removed the words 'the judicial power of the Federation shall be vested' from the body of Article 121(1). Second, it was worded such that all jurisdiction and powers of the High Court and the inferior courts shall be as may be conferred by or under federal law. Nothing much happened in the many years that followed the amendment not at least until the decision of the Federal Court in a case called *Kok Wah Kuan*.[5]

[78] The issue in that case concerned a provision of a law called the Child Act 2001. In effect, the provision dictated that any child convicted of an offence punishable with death shall, instead of being punished with death, be detained at the pleasure of the YDPA, the King. The provision was challenged on the basis that it violated the doctrine of separation of powers for having removed the Judiciary's power to determine the measure of sentence. It was further argued that the YDPA being the head of the Executive branch of Government meant that the measure of the sentence was instead to be determined by a non-judicial body, the Executive arm of Government.

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[5] *Kok Wah Kuan v Public Prosecutor* [2008] 1 MLJ 1.

[79] Now, what is interesting is that the Federal Court unanimously held that the provision was constitutional and valid. However, the Court was split on its reasons. The majority judgment, which was delivered by Justice Tun Abdul Hamid Mohamad, in very simple terms held that Parliament was within its powers to amend Article 121(1) of the FC.

[80] Justice Hamid reasoned that the Courts, by the amendment effected in 1988, Parliament had in fact removed any vesting of judicial power and emphatically determined that all powers and jurisdiction the Court shall have, are as strictly determined by Parliament. He further reasoned that since there was no express statement of the doctrine of separation of powers in the FC, then there could be no argument of its violation in the provision that removes the power to determine the measure of a sentence to a non-judicial body.

[81] As you can probably tell, the Federal Court majority's decision was heavily criticised for effectively converting Malaysia into a Parliamentary supremacy. It is hard to argue with the critics because the criticism is substantively correct. Reading the amended Article 121(1) in this way, in effect, disregards the foundation of the constitution in its creation of three distinct arms of Government and further treats the Malaysian Parliament like the Parliament of UK to the extent that the Courts are obliged to uphold any law passed by Parliament as valid because they are subordinate to it.

[82] If we apply *Kok Wah Kuan*'s interpretation of the FC, then the provision of the LAA 1960 ought to have been upheld as valid. Because if there is no express mention of separation of powers in the FC and the Courts are bound to Parliament's dictates, then it did not matter that a

High Court in any land acquisition compensation hearing was just a rubberstamp for the lay and non-judicial assessors. Clearly, the Federal Court saw the flaw in this and found that it could no longer accept the proposition in *Kok Wah Kuan* – which now leads me to the bigger picture that was targeted in that case.

[83] In *Semenyih Jaya*, the parties challenging the LAA 1960 effectively sought to obliterate the bad precedent that was established in *Kok Wah Kuan*. For this, they resorted to the Indian BSD established in *Kesavananda* for the proposition that there are basic features in the FC that cannot be amended even by Parliament, and in the context of *Semenyih Jaya* case, it was argued that judicial power and separation of powers were such basic features. Accordingly, it was suggested that the 1988 amendment was bad in law and the Courts were at liberty to strike down the impugned LAA 1960 provision. The premise for this was the assumption that *Kok Wah Kuan* correctly determined the legal effect of the amended Article 121(1) as articulated in that case.

[84] The Federal Court in *Semenyih Jaya* effectively referred to Article 4(1) of the FC and held that the Indian BSD is applicable in Malaysian law. The Court then interpreted the amended Article 121(1) and in my reading of it, held that the majority in *Kok Wah Kuan* misconstrued the nature and effect of the amendment. The Federal Court held that while the BSD was effectively applicable in Malaysia, there was no need to apply it because construing Article 121(1) on a whole, the judicial power of the Federation remains vested in the Judiciary and the Judiciary is not subordinate to Parliament in light of Article 4(1). *Semenyih Jaya* then spelt the end of *Kok Wah Kuan* and propelled our constitutional law in the right direction.

[85] *Semenyih Jaya* which was decided before I was even elevated to the Federal Court, was followed by two other important constitutional decisions that upheld constitutional supremacy and continued to reinforce the existence of the BSD in Malaysia. These were the decisions in *Indira Gandhi*,[6] and *Alma Nudo*.[7] Together, *Semenyih Jaya*, *Indira Gandhi* and *Alma Nudo* are known as the '**Trilogy of Cases**'.

[86] However, as is the case with most things that develop, they develop slowly and not without bumps along the way. And up to the point that the Trilogy of Cases were decided, there was still much lingering doubt afloat regarding the applicability of the BSD in Malaysia.

[87] In particular, in many other constitutional challenges that surfaced after *Alma Nudo*, the Government in defending itself against constitutional challenges continued to make attempts to revive *Kok Wah Kuan*. In all such challenges, arguments were repeatedly made to the extent that the BSD is inapplicable in Malaysia and that we are wrong to import a foreign doctrine into Malaysia from a completely different jurisdictional context.

[88] Let me be clear in that I think there is slight merit to that argument. For one, the primary basis upon which the Indian BSD was formulated is that the Indian Constitution has a preamble. That preamble highlights among other things India's status as a republic, and a State. The FC in Malaysia on the other hand does not have a preamble from which we can derive basic features. But as you can guess, that is not the end of the argument or the case for a similar doctrine in Malaysia.

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[6] *Indira Gandhi Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 3 CLJ 145.

[7] *Alma Nudo Atenza v PP & Another Appeal* [2019] 5 CLJ 780.

[89] In later cases, the Federal Court was divided on the application of the BSD in Malaysia. One such example was the case in *Maria Chin*.[8] Later, the Federal Court was again divided in cases such as *Rovin Joty*,[9] and *Zaidi Kanapiah*.[10] In both cases, the majorities rejected in one way or another the application of the BSD in Malaysia and seemed to have departed from clear and irrefutable precedent in the Trilogy of Cases.

[90] That was short-lived as later in the landmark decisions of *Dhinesh*[11] and *Nivesh*,[12] the Federal Court emphatically held that while the BSD is not applicable in Malaysia, a version of it called the doctrine of constitutional supremacy remains law in Malaysia.

[91] *Nivesh* is particularly relevant as it, like *Rovin Joty* and *Zaidi Kanapiah*, concerned the interpretation of section 4 of the Prevention of Crime Act 1959 ('POCA 1959'). In essence, that provision stipulated that so long as a Magistrate in a remand hearing was presented with certificates signed by certain parties from the Executive arm of government, then the Magistrate was bound to order the detention of the detainee. These cases, including *Maria Chin*, also concerned statutory provisions that in one way or another restricted judicial review in the form of ouster clauses.

[92] Again, attempts were made by relying on *Kok Wah Kuan* and related cases that the Judiciary was properly restricted by Parliament from

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[8] *Maria Chin Abdullah v Ketua Pengarah Imigresen & Anor* [2021] 2 CLJ 579.

[9] *Rovin Joty a/l Kodeeswaran v Lembaga Pencegahan Jenayah & Ors and other appeals* [2021] 2 MLJ 822.

[10] *Zaidi bin Kanapiah v ASP Khairul Fairoz bin Rodzuan and other cases* [2021] 3 MLJ 759.

[11] *Dhinesh Tanaphll v Lembaga Pencegahan Jenayah & Ors* [2022] 3 MLJ 356.

[12] *Nivesh Nair a/l Mohan v Dato' Abdul Razak bin Musa, Pengerusi Lembaga Pencegahan Jenayah & Ors* [Case No: (05(HC)-7-01/2020(W)), decided on 25 April 2022].

reviewing the legality of the legislation and acts performed in accordance with them. In both *Dhinesh* and *Nivesh*, the Federal Court unanimously upheld that the minority judgments in *Maria Chin* and *Zaidi Kanapiah* are correct and that those provisions were null and void.

[93] By these latest decisions, the position of our constitutional law stands, that is, that Parliament cannot enact laws that violate the basic features of the FC and that the Courts cannot be restricted from their inherent judicial powers of review against Acts of Parliament or any Executive acts or omissions because of Article 4(1) of the FC. In this assessment, the Courts can even strike down constitutional amendments that violate the basic structure of the FC.

[94] In arriving at this conclusion, the Federal Court re-emphasised the position established in the Trilogy of Cases that the 1988 constitutional amendment did not remove judicial power and that this only occurred because of the misinterpretation of the amended Article 121(1) in *Kok Wah Kuan*. While the doctrine of constitutional supremacy, which was held to be applicable in place of the Indian BSD was affirmatively recognised, the Federal Court did not have to resort to it to strike down the constitutional amendment to Article 121(1) having corrected the misinterpretation that arose in *Kok Wah Kuan*.

[95] In relation to constitutional supremacy, these cases ruled that we need not resort to a foreign concept because the essence of the BSD, unlike the Indian Constitution which had to imply it into their written constitution, in Malaysia it is in-built.

[96] The problem, as I see it, was that all this while in our history, the case was made both for and against the importation and adoption of the BSD into our law. In fact, the struggle to have *Kesavananda* imported into Malaysia long predates *Semenyih Jaya* to cases that were decided in the late 1970-s such as in *Loh Kooi Choon*,[13] and *Phang Chin Hock*.[14]

[97] I need not delve into those cases as *Semenyih Jaya* and later *Zaidi Kanapiah* dealt with them. The current cases now hold that that the essence of the BSD is applicable in Malaysia without having to rely on Indian authorities such as *Kesavananda*.

[98] The methodology is simply this. Article 4(1) starts with the phrase: 'this Constitution is the supreme law of the Federation'. Then, the FC goes on to establish, in its many provisions, the Houses of Parliament and establishes its legislative powers in Lists that I mentioned earlier. As such, Parliament was created by the FC and its powers are circumscribed by it.

[99] Article 159 then caters for Parliament's specific powers to amend the FC in accordance with prerequisite majorities and consents that Parliament must obtain. However, in wording that power, Article 159(1) uses these words: '… **the provisions** of this Constitution may be amended by federal law.'

[100] In Article 4(1), the FC refers to itself as 'this Constitution' while in 159(1) it allows amendments to its 'provisions' and that too by federal law. Article 4(1) then goes on to say that any law 'passed' after Merdeka Day

[13] Loh Kooi Choon v Government of Malaysia [1977] 2 MLJ 187.
[14] Phang Chin Hock v PP [980] 1 MLJ 70.

that is inconsistent with the FC is to the extent of the inconsistency void. This means that when Parliament passes a federal law to amend the provisions of the Constitution (which is narrower in meaning to 'this Constitution'), then such a law is also capable of scrutiny and capable of being struck down by the Courts.

[101] This is just a plain reading of these provisions for what they say. And when you read them this way, they collectively mean that the Constitution is larger than the sum of its parts, and if we consider that it was the social contract that was concluded with the conditions to form Malaya and later Malaysia, there are parts of it that cannot be destroyed even by constitutional amendment if that amendment defaced the basic tenets of what Malaysia is today.

[102] You can then appreciate that this is not the Indian BSD. It is our own doctrine of constitutional supremacy ingrained in Article 4(1). We have this express supremacy provision that should give us everything in line with the powers of judicial review established in *Marbury* and the essence of the BSD which India had to read into its constitution. And yet, we are debating its existence when it is included into the very words of our FC.

[103] This is therefore a measured balance. It does not mean that Parliament cannot ever amend the FC. For they have done so in many stellar cases such as the recent constitutional amendment that equalised citizenship rights by allowing mothers of children with foreigner fathers born overseas to pass down their Malaysian citizenship to their children when previously that right was only conferred to Malaysian fathers who married non-Malaysian mothers and their children are born overseas.

[104] The existence of the doctrine of constitutional supremacy enshrined in Article 4(1) simply means that Parliament cannot unmake the Malaysian State by for example removing the judicial arm of Government, removing Islam as the religion of the Federation, abolishing the monarchies or other similar amendments that transform Malaysia to something other than what was intended by the social contract.

Constitutional Judicial Review and Federalism

[105] All these powers explained in the decisions to which I have just referred, to the unobservant eye, might paint the impression of a judicial supremacy. To assuage this unfounded fear or perhaps delusion, I can only quote again from the erudite Tun Suffian who in one of his celebrated treatises, remarked thus:[15]

> "If Parliament is not supreme and its laws may be invalidated by the courts, are the courts then supreme? The answer is yes and no – the courts are supreme in some ways but not in others. They are supreme in the sense that they have the right – indeed the duty – to invalidate Acts enacted outside Parliament's power, or Acts that are within Parliament's power but inconsistent with the Constitution. But they are not supreme as regards Acts that are within Parliament's power and are consistent with the Constitution.".

[106] What is clear therefore is that the written constitution, having established prior to Parliament and actually being the basis of Parliament's existence, stands above it. However, the FC is not self-executing and in cases where the validity of laws or their legal provisions are called into question, there is no other legal institution apart from the

[15] *An Introduction to the Constitution of Malaysia* (3rd edition, Pacifica Publications, 2007), at p. 18.

entirely independent Judiciary that can resolve their validity. And in cases where a case for invalidity is successfully made on the high threshold that it takes to establish it, then the Courts are dutybound by Article 4(1) to strike down that law.

[107] It is therefore in this context that the Federal Court in a case called *SIS Forum* noted the clear distinction between constitutional judicial review and statutory or administrative judicial review.[16]

[108] In summary, statutory judicial review, which I postulate is closer in form and substance to the method of judicial review in England that I explained earlier, involves judicial oversight over public bodies including Executive bodies of their exercise or non-exercise of their powers which are strictly and positively conferred by law. You then have situations where the Court, may depending on the facts, mould all manner of relief including granting prerogative writs such as certiorari, mandamus, or quo warranto; and other situations wherein the Court may grant declaratory relief or award monetary compensation.

[109] Statutory judicial review may arise or occur even if the basis of the power of the body in question is conferred by the written constitution itself. In other words, statutory judicial review is not constitutional judicial review simply because it involves powers exercised or not exercised under the FC. A clear example of this is a situation where it concerns limited judicial oversight of the powers of the Public Prosecutor ('PP') cum Attorney General ('AG') who decides to charge or not to charge a person with an offence. The limited examination of the AG/PP's constitutional discretion to charge or not to charge a person consonant with his constitutional

[16] *SIS Forum (M) v Kerajaan Negeri Selangor (Majlis Agama Islam Selangor, intervener)* [2022] 2 MLJ 356, at [25]-[42].

mandate such as the case in *Sundra Rajoo* is better categorised as an instance of statutory judicial review.[17]

[110] As you can then appreciate by contrast, constitutional judicial review, like statutory judicial review is another form of judicial oversight but it is not necessarily concerned by the exercise of power, but the interpretation of the written constitution that forms the basis of that power and in some cases, the questions of constitutional importance that are posed go to the extent of determining the validity of the law that forms the basis of those powers.

[111] In the context of federalism in Malaysia specifically, and for the purposes of this lecture, constitutional judicial review here refers to either the legal validity of a law passed by Parliament or the State Legislature but that are otherwise alleged to be inconsistent with other provisions of the FC. In other cases, the allegation runs deeper and suggests that the law that might have been passed either by Parliament or the State Legislature were not even, in the first place, within their purview to pass. In either case, they are invalid under Article 4(1) of the FC.

[112] In Malaysia, when we talk about federal and State relations or federalism generally, the large bulk of cases that arise in that context refers to that latter category: that is to say, cases where an allegation is made that either Parliament or the State Legislatures had no power to make the law in question. And, in that assessment, it is often alleged that the impugned law is within the purview of one and not the other and not within the concurrent sphere; and as such, whichever party that passed that law had no power to pass it.

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[17] *Sundra Rajoo a/l Nadarajah v Menteri Luar Negeri, Malaysia & Ors* [2021] 5 MLJ 209; and *SiS Forum* (supra), at [38].

[113] In the time that I have been Chief Justice of Malaysia, I did not see any substantive challenge to the effect that suggested that Parliament could not make a law. In my time, most if not all these challenges were against a State or the State Government alleging that the laws that they had passed, and which were in question, were within the purview of Parliament or simply, that they were not within the purview of the State List and as such, invalid.

[114] I will also not shy away from mentioning that most if not all of these challenges pertained to cases which concerned Islamic law. The history of this subject is itself the topic of another lecture, but simply put, Item 1 of the State List confers upon the State certain powers of legislation and that is to enact laws which are applicable to 'persons professing the religion of Islam' within that State and that too, strictly within the ambit of the subject matter of 'Islamic law and personal and family law of persons professing the religion of Islam'.

[115] When these challenges were brought to Court, the role of the Judges was purely and simply to interpret the scope of the law in pith and substance and determine whether the strict federal and State division of powers established by the FC were upheld. And in this regard, some examples are apposite.

[116] The earlier case of *SIS Forum* that I cited to you was such an example. In that case, the State of Selangor enacted a provision of law that empowered the Syariah Courts in Selangor to perform judicial review against certain religious bodies established in the State of Selangor. To be more exact, the impugned provision reads:

> "The Syariah High Court, may, in the interest of justice, on the application of any person, have the jurisdiction to grant permission and hear the application for judicial review on the decision made by the Majlis or committees carrying out the functions under this Enactment.".

[117] Even from a cursory reading, one can tell that this conferral of power has nothing to do with the intention behind Item 1 of the State List as I explained earlier. The *SIS Forum* judgment also more than clarified an already established point that under the scheme of our written constitution, the sole power to perform statutory and/or constitutional judicial review including the interpretation of any constitutional provision is an exclusive power of the civil Superior Courts. And thus, in concluding that the State of Selangor exceeded its powers of legislation, that section which I just read out to you was struck down as null and void under Article 4(1) of the FC.

[118] Another recent example of such judicial analysis can be seen in the Federal Court case of *Nik Elin*.[18] In this case, the petitioner challenged several provisions of a law passed by the State Legislature of Kelantan. It was argued that the impugned provisions in that case were enacted in relation to criminal laws which pertained to matters upon which only Parliament could legislate under the purview of general criminal laws.

[119] For instance, certain provisions of the Kelantan enactment (among other things) criminalised sexual intercourse with corpses, incest, sexual harassment, and the giving of false evidence. Upon an analysis of the pith and substance of the law which was said to be related to the penalisation of matters that were against the Islamic faith, the Federal

[18] *Nik Elin Zurina bt Nik Abdul Rashid & Anor v Kerajaan Negeri Kelantan* [2024] 2 MLJ 150.

Court noted that while the incongruity of these offences with Islam is not disputed, the fact remained that they sought to criminalise matters which applied to all Malaysians regardless of religion. It must be borne in mind that the intention of Item 1 of the Ninth Schedule only allows the States to criminalise 'religious offences' only and that the rest of these offences falls under the category of general criminal law upon which only Parliament can legislate.

[120] In this vein, you should be able to appreciate that from a legal perspective, this had nothing to do with Islam as a religion neither was it an attempt by the Superior Civil Courts to so-called interfere with the proliferation of Islamic law in Malaysia. All that the decision sought to do was apply the law as what it should be in line with the constitutional limits that have been established. In this regard, it was held that the law that was passed by the State of Kelantan was subject to the limits established by the FC and consistent with its clear division of powers between the federal and State legislatures.

[121] The laws passed by the Kelantan State Legislature, to the extent that they transgressed that constitutional limit, were thus deemed unconstitutional and struck down under Article 4(1) of the FC. And in so doing, the Judiciary was merely performing its constitutional duties enshrined in Article 121(1) as it should be correctly read.

[122] I would not be honest if I failed to mention that many of these decisions to the extent that they strike down laws that purport to apply the religion of Islam are often spun for political reasons even to the extent that certain parties rouse public anger at a perceived attempt by a Judiciary to erode Islamic law in Malaysia. What is worse is that some of these provocateurs know full well that these decisions do nothing of that sort

and instead, seek to hold the offending State Legislature accountable to its transgression of legislative powers.

[123] Many of the naysayers who are politically opposed to such kinds of decisions and who use them as political ammo in their attempts to confuse the public who may not necessarily understand such issues often do so by, among other things, wrongly invoking Article 121(1A) of the FC.

[124] In short, the said Article 121(1A) stipulates that: the Superior Civil Courts established by Article 121(1) '*shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts.*'

[125] Going back briefly to history, and still on the topic of federalism, it is undisputed that there was to be a partial retainment of Islamic law and their attendant Syariah Courts. I say 'partial' because Islamic law is not the primary legal system in Malaysia and the Syariah Courts themselves are limited in their jurisdiction to Muslims only and that too strictly to the matters listed in Item 1 of the Ninth Schedule. While it is limited, the powers to enact laws and procedure regarding the Islamic legal system rest largely if not mostly with the States except the Federal Territories for which Parliament makes those laws. As such, when either side be it federal or State does not respect such a demarcation, you can appreciate then the tension that arises given also the sensitivity of the subject that has to do with religion, faith and identity.

[126] And thus, without getting too much into detail, Article 121(1A) was introduced via a constitutional amendment in 1988 upon certain controversies that involved the civil Superior Courts reversing substantive decisions of the Syariah Courts on matters that were purely within the

jurisdiction of the Syariah Courts. The classic example is the oft-cited case of *Myriam* wherein the civil High Court altered a custody arrangement previously settled by the Syariah Court.[19]

[127] Put another way, while the Ninth Schedule clearly sets the basis for the States to enact Islamic law within the limits defined, interference or even perceived interference by a federally ordained Judiciary into what is a State-Government run legally sanctioned religious institution can very clearly be seen as defying the clear divider established by Malaysian federalism. Article 121(1A) was therefore a welcome constitutional amendment.

[128] Having said all that, and as reiterated very recently in another case decided by the Federal Court most recently regarding *SIS Forum*,[20] the insertion of Article 121(1A) did and does not have the effect of either one: enlarging the jurisdiction of the Syariah Courts or the State Legislatures to enact laws beyond the scope of Item 1 of the Ninth Schedule; or two: relieving the Superior Civil Courts from their duty to interpret the FC and in that vein, to determine the validity of laws in light of the supremacy of the FC per Article 4(1) i.e. to engage in constitutional judicial review.

[129] As such, it is not quite correct to paint the impression that when the Federal Court or any other civil Superior Court strikes down a law purporting to deal with the administration of the religion of Islam in any way, such an exercise is an incursion when in actual fact, it was merely to uphold the clear letter and spirit of federalism in Malaysia – so long as that

[19] *Myriam v Mohamed Ariff* [1971] 1 MLJ 265.

[20] *SIS Forum (Malaysia) & Anor v Jawatankuasa Fatwa Negeri Selangor & Ors* [2025] CLJU 1427.

decision was premised on civil law and not in any way concerned with the substance of the Islamic law in question.

[130] In this regard, the earlier *SIS Forum* decision and the later decision of *Nik Elin* are clear examples of this. It was not an attempt by the Federal Court to override Article 121(1A) of the FC rather, a real exercise of judicial power to reestablish the clear and indisputable boundaries already established by the FC.

[131] In the earlier *SIS Forum*, for instance, it was made plain what was already correct and clear that the Syariah Courts cannot and do not have any powers to perform judicial review as that is entirely and exclusively within the inalienable judicial power of the civil Superior Courts. And, as correctly held in *Indira Gandhi*, while the Superior Courts cannot deliberate on the substance of matters that fall squarely within the jurisdiction of the Syariah Courts, the Syariah Courts do not otherwise remain immune from any form of administrative or constitutional scrutiny – and when they are subject to such scrutiny, then by virtue of the FC, such scrutiny is by the civil Superior Courts from an administrative and/or constitutional standpoint.

[132] And thus, I would urge each and every Judge, irrespective of race and/or religion, that when faced with cases like these, remember first your duties to the FC and the Rule of Law and decide them just like any other case should be decided. The FC should always reign supreme and if people should spin your decision, even with the dangerous spin of using religion for politics, that should not be your concern. This is not judicial supremacy but constitutional supremacy consistent with the intent and design of our FC – and do not let anyone tell you otherwise.

CONCLUSION

[133] In conclusion, I hope my lecture has helped shed some light on the topic of judicial independence and power in the Malaysian context of federalism.

[134] I once again thank CJ Menon and the Singapore Academy of Law for inviting me to deliver this prestigious lecture. Thank you.