

JUDICIAL INTEGRITY IN STRENGTHENING THE NATION*

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INTRODUCTION

Assalamualaikum warahmatullahi wabarakatuh and good afternoon.

All praises be to Allah SWT for it is only with His Blessings and Mercy that we are able to gather here today on this august occasion of the 3rd Tan Sri Harun M. Hashim Memorial Lecture 2023. This has been a longstanding invitation since February 2021 but the pandemic brought us other plans. Alhamdulillah, more than two years later, we are here.

It is truly an honour for me to speak in memory of the Late Tan Sri Harun Hashim who is heralded as a humble, patient, and incorruptible figure. It seems only right that he was appointed the first head of the then Anti-Corruption Agency prior to his elevation to the Bench.

One example, in my view, of one of the Late Tan Sri Harun's remarkable decisions that exude his integrity (in his own right) is his dissenting judgment in *Manjeet Singh*.¹ Briefly, the Attorney General moved the Supreme Court to commit a lawyer, Manjeet Singh Dhillon for alleged contemptuous comments he had made in another case against the then Lord President Abdul Hamid Omar for matters relating to the 1988 Judicial Crisis.

Writing for the minority, His Lordship Harun Hashim drew an important distinction between defamatory and contemptuous statements. Without implying anything untoward to the rest of the panel, I take the view that His Lordship clearly showed his integrity

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** The Right Honourable, The Chief Justice of the Federal Court Malaysia.

¹ Attorney General, Malaysia v Manjeet Singh Dhillon [1991] 1 MLJ 167

and independence when he could arrive at the conclusion that the statements, though possibly defamatory, were not contemptuous. I do not mean to say that the other learned Justices lacked integrity. I am merely trying to highlight that Justice Harun was not afraid to dissent and was not swayed by any other considerations than the law in deciding such a sensitive issue when His Lordship Abdul Hamid Omar was still the serving Lord President.

Given the tense political and social climate of Malaysia today, I must congratulate the Dean and the Faculty of the Ahmad Ibrahim Kulliyah of Laws for their dedication in hosting this timely event to remember the paragon of integrity, the Late Tan Sri, no less with the apt theme of “Judicial Integrity in Strengthening the Nation”.

Indeed, one might make the case that those in power today, not just here, but around the globe, especially in some enforcement agencies, have much left to be desired in their emulation of Tan Sri Harun’s incomparable levels of integrity. He has left us with big shoes to fill.

I am most obliged and grateful for the invitation to share my views on this subject. The theme is a broad one and so perhaps I might be permitted to narrow down the subject by identifying certain areas of interest. In this regard, in the time that I have, I would like to share with you, the following four aspects I have sought to carve out:

- 1) A definition – certain concepts and aspects of integrity;
- 2) The Judiciary and the concept of integrity;
- 3) How, in the context of an adversarial justice system, integrity cannot just be confined to the Judiciary and Judges; and
- 4) Finally, how integrity forms the very bedrock of a strong nation.

JUDICIAL INTEGRITY – CONCEPTS AND ASPECTS

Before I venture into the academic side of things, please allow me to share some personal thoughts. ‘Integrity’ is a concept easy enough to understand, better appreciated by example and harder to explain in clear words. But what I can say is that, in my view, integrity is defined by its two equally significant and interrelated components that feed off each other.

The first of these components has to do with oneself; the psyche. Sometimes, a thing may be legal but not necessarily moral or vice versa.

Take this simple example. A tenant struggles to pay rent for six months because his becoming partially paralysed affects his ability to generate income. The landlord accepts the tenant’s rent every month for each of those months but also with severe delay in payments each month. In this example, the landlord is fully cognisant of the tenant’s plight but elects to remain silent or passive. The landlord, having found a better tenant, moves to evict the existing tenant for late payment after having accepted the late rent payments. Let us assume the landlord has every full legal right. But what about his own integrity? His morality?

In this regard, the internal aspect of integrity adjudges the individual on how best he translates his psyche’s response to an external situation in a manner that is not just legally tenable but morally correct as well from an objective standpoint.

The second aspect of that moving equation is thus, the external factors. We are all impacted by extraneous situations at times and it is when they emerge that our adherence to our own integrity is tested. Financial, political and personal biases that come into play every now and then test the limits of our integrity.

I now suggest that you elevate these two moving parts in the example just now to a higher level – the level of an independent adjudicator. And so, from a judicial standpoint, the two moving parts come together to evaluate how the judicial or legal mind responds to his own convictions and inhibitions in light of external stimuli that

poke at the mind of the decision-maker, lawyer or enforcement agency – all of whom play a crucial role in our adversarial justice system.

As such, on a macro level, one can appreciate that integrity and justice are intertwined. Without integrity, justice will not prevail. And judicial integrity is not merely a virtue but a pre-requisite to upholding the Rule of Law in a democratic system of government without which we cannot build a properly functioning nation.

With that, allow me to now move to the more academic definitions.

A variety of meanings have been given to the word integrity. In Black's Law Dictionary, the term integrity is defined as follows:²

"INTEGRITY. As occasionally used in statutes prescribing the qualifications of public officers, trustees, etc., this term means soundness of moral principle and character, as shown by one person dealing with others in the making and performance of contracts, and fidelity and honesty in the discharge of trusts; it is synonymous with "probity," "honesty," and "uprightness." In re Bauquier's Estate, 88 Cal. 302, 26 Pac. 178; In re Gordon's Estate, 142 Cal. 125, 75 Pac. 672."

Integrity is sometimes seen in a very narrow perspective, i.e. whether or not a Judge is corrupt and corruption is generally viewed from the monetary aspect. Of course, corruption in the monetary sense erodes integrity and undermines justice, its effective and efficient administration and the Rule of Law as well as credibility of the justice system as a whole. If corruption permeates the Judiciary, the poor and the vulnerable would suffer the most.

In this regard, Article 11 of the United Nations Convention Against Corruption refers to judicial integrity as the ability of the judicial system or members of the Judiciary to resist corruption, while fully respecting the core values of independence, impartiality, personal integrity, propriety, equality, competence and diligence.

² Garner, B. A., & Black, H. C. (1968). Black's law dictionary. 4th ed. St. Paul, MN, West.

Hence, judicial integrity relates not only to the ability of members of the Judiciary to resist corruption which falls under the aspects of probity, honesty and uprightness but the term judicial integrity covers all those core values of judicial ethics that correlate to the notion of judicial integrity. The values mentioned in Article 11 of the United Nations Convention Against Corruption as set out in the Bangalore Principles of Judicial Conduct, have also been codified in our Judges Code of Ethics 2009 ('the Code'), namely, in respect of:

- (i) upholding the integrity and independence of the Judiciary;
 - (ii) avoiding impropriety and the appearance of impropriety in all judicial activities; performing judicial duties fairly and efficiently; and
 - (iii) minimising the risk of conflict with the Judges' judicial obligations while conducting his extra-judicial activities.
- Apart from the principles enumerated above,

I would add that judicial integrity also includes intellectual honesty, accountability and transparency.

A Judiciary of unquestionable integrity is the cornerstone of democracy and the Rule of Law. It acts as a bulwark against any encroachment of rights and freedom under valid law even when all other protections fail.

Thus, and properly so, the Federal Constitution and the Judicial Appointments Commission Act 2009 (the JAC Act 2009) (without going into specifics) contain provisions on the appointment of Judges of the Superior Courts in Malaysia. The process of appointment puts candidates through vigorous vetting by the Police, the Malaysian Anti-Corruption Commission, the Companies Commission of Malaysia and the Insolvency Department, before they may even be considered for appointment to the Bench. An absence of any one of these aspects denotes an integrity vacuum and belies any appointment outright.

Viewed in this way, I think it is fair to state that once appointed, the integrity of Judges cannot therefore be the subject of discussion or question unless, of course credible and supervening evidence surfaces to warrant such an inquiry. With such evidence, and not mere conjecture or bare allegations, the corrupt Judge is liable to answer to

the full brunt of the law and will be dealt with in accordance with the law.

Having said that, I will now share some of my views on integrity and the Judiciary in the main aspects of the core values highlighted earlier.

INTEGRITY AND THE JUDICIARY

Judicial Independence

The first aspect of judicial integrity which I would like to allude to is judicial independence, which is a rudimentary notion of judicial integrity. Housed in paragraph 5 of the Code, a Judge shall exercise his judicial function independently by assessing the facts and understanding of the law, free from any extraneous influence, inducement, pressure, threat, or interference, direct or indirect from any quarter or for any reason. Independence of the Judiciary calls for individual Judges and the Judiciary as a whole to remain impartial and independent of all external pressures and of each other, so that those who appear before them and the wider public have confidence that their cases will be decided fairly, free from any interference, be it from litigants, the executive, the media, powerful individuals or entities or from other Judges.

In other words, in deciding cases, Judges are answerable to no one, except their conscience and their learning, where decisions are made solely on the evidence presented in court by the parties and in accordance with the law. In short, individually, an independent Judge decides a case on its merits, without regard to the personalities involved, with no fear of any kind of threat or sanction. An independent Judge will not succumb to any kind of pressure nor be lured by any kind of reward or promise.

You will find that this is something very basic yet it still needs to be stated. Why is it pivotal that the Judiciary remain independent? It is to ensure that judicial processes and the administration of justice is not compromised. Because if it is compromised, justice will never be

done. Looking from the Islamic perspective, Buraydah reported: The Prophet, peace and blessings be upon him said:

“The Judges are three kinds: two Judges are in hellfire and one Judge in paradise. A Judge who judges without the truth while he knows it, he is in hellfire. A Judge who has no knowledge and violates the rights of the people, he is in hellfire. A Judge who judges with the truth, he is in paradise.”³

A Judge can only decide with the truth if he is completely free to decide based on the evidence and his understanding of the law, without any interference from any quarters. If there is interference and he is not independent, his decision will no longer be based on the truth but based on or rather coloured by the interference. This will then put him in the first category of the three kinds: he knows the truth but because of the interference, decides not based on the truth.

Judicial Propriety and Impartiality

Paragraph 6 of the Code prescribes that a Judge shall act at all times in a manner that promotes the integrity and impartiality of the Judiciary. In upholding these principles, a Judge shall not allow any relationship to influence his judicial conduct or judgment; shall not lend the prestige of his judicial office to advance his or others' private interest; and shall not convey or permit others to convey the impression to any person that they are in a special position to influence him.

The principle of impartiality to a certain extent overlaps with judicial independence as it dictates that in deciding cases, the judicial mind must be free from bias, as bias can sway or colour judgment, rendering a Judge unable to exercise his or her functions impartially in a given case.⁴ In this regard, we are not only concerned with the actual absence of bias, but also the perception of its absence. This dual aspect is captured in the principle that justice must not only be done, but must be seen to be done.

³ Source Sunan Al-Tirmidhi 1322 Grade: Sahih according to Al-Albani.

⁴ R v S [1997] 3 SCR 484 (Supreme Court of Canada) [106]

Tied to the point of bias, is this. A Judge's demeanour is crucial to maintaining his or her impartiality because it is what others see. Improper demeanour can undermine judicial integrity and the judicial process by conveying an impression of bias or indifference. Disrespectful behaviour towards a litigant infringes on the litigant's right to be heard, and compromises the dignity and decorum of the courtroom. Lack of courtesy also affects a litigant's satisfaction with the handling of the case. In summary, it impacts on judicial integrity and creates a negative impression of the courts in general. Patience, dignity and courtesy are essential attributes of a Judge which lend to the virtue of judicial integrity.

Indeed, it is also the duty of a Judge to see that lawyers keep to the rules laid down by law and to maintain order and decorum in court. This is important so that the business of the court will be accomplished in conformity with the rules governing the proceeding and with the dignity the legal profession demands.

Competence and Diligence

The values of competence and diligence are codified in paragraph 7 of the Code. Subparagraph (4) stipulates that a Judge shall dispose of all his judicial duties fairly, efficiently, diligently and promptly while subparagraph (7) provides that a Judge shall endeavour to diligently and efficiently hear and complete the cases in his court and promptly write his judgments. A competent Judge is a Judge who has sufficient legal knowledge and possess skills to overall manage his cases. In terms of legal knowledge, a Judge should be well-versed with established legal principles as well as evidentiary and procedural rules. In terms of management, section 23(2) of the JAC Act 2009 requires Judges to deliver timely judgments, display industriousness and ability to manage cases well. Various administrative directions have been issued in this respect. A judge must have a strong work ethics and good organisational skills.

No one can deny that Judges have a very heavy workload. In this regard, I would like to refer to an article entitled "Time to Rebuild the Malaysian Judiciary" written by a lawyer, GK Ganesan Kasinathan, which was published in Malaysiakini News on 19 May 2018. Among others, he said:

“On a daily basis, a Judge has to read some 20 main submissions and 10 replies. Each would be about 20 pages long. Every single day, a Judge has to read not only the cause papers but also 200 pages of arguments. He or she has to analyse case law. These run into tens of pages. That is at least 600 pages. Additionally, at the end of an exhausting day, he or she has to write a Judgement from 10 to 30 pages long. It cannot be done. No one can do it. I defy any member of the Bar to try it.

So Judges don’t usually read. ...”.

While he is correct on the volume of work, he is not quite correct to say that ‘Judges don’t usually read’. Contrary to what he said, and I can vouch for many of my sister and brother Judges, we do read the cause papers and the submissions. And Judges, like lawyers, are also assisted by ‘associates’, our Registrars, in some aspects of our work. It might seem like an impossible task but we manage. It is dishonest for us to decide without understanding the matter before us and understanding must surely begin with reading.

Judicial Accountability

I now move to the aspect of judicial accountability. To ensure that the administration of justice runs smoothly, it is vital that the Judiciary be accountable to the public. After all, the larger purpose of the justice system is to do justice to and by the citizenry. An element of accountability is transparency. Accountability and transparency also dictate that Judges provide reasons or grounds of judgment for their decisions. In this regard, an important aspect of accountability and transparency of the judicial system is the accessibility of the public, not only to court proceedings but to grounds of judgments.

Apart from upholding the principles of accountability and transparency, there are other reasons why it is important for Judges to write grounds of judgment. First, writing grounds would lead to an increased care in dealing with submissions and analysis of evidence, giving rise to sounder decisions. Second, providing grounds would ensure that parties knew why they had lost or won and from a broader perspective, the legal profession and the community might also have a legitimate interest in knowing these reasons as it enabled them to

ascertain the basis upon which like cases would probably be decided in the future. Third, it would ensure that the appellate courts have the proper material to understand and do justice to the decisions taken at the first instance. Fourth, providing grounds would serve as a means of curbing arbitrariness.⁵ All the above lend to the integrity of the decision-making process.

Also related to the notion of judicial integrity, is that Judges are guided by established principles and the doctrine of *stare decisis* in arriving at their decisions. Where the law provides for the exercise of discretion, it must be exercised judiciously, not capriciously or arbitrarily. Reasons must be given for accepting or rejecting any evidence; decisions must not be made on issues not in dispute between parties or issues not canvassed or ventilated by parties; and decisions must not be against the weight of evidence. In short, rules and procedures and legal principles must be adhered to and intellectual honesty must be observed. A judgment rendered not based on facts and established legal principles but based on irrelevant considerations threatens judicial integrity; will be incoherent and will not add value to the jurisprudence. Inconsistencies in the arguments will be apparent and the judgment will be a mark of shame.⁶

There are many other legal rules, formalities and traditions in place that ensure that decisions are consistent, such as principles on appellate intervention and the exercise of first-instance discretion.

Another aspect of judicial integrity that relates to accountability and transparency concerns the complaint mechanism against Judges as contained in the Code. Paragraph 12 of the Code prescribes the procedure for breach. It is important to highlight that the mechanism for disciplining members of the Judiciary under the Code is free from the influence of the executive. The Code stipulating mechanisms of integrity and discipline would be rendered redundant if we do not implement or enforce it should an occasion warrant it. It is in the public knowledge that this Code has in fact been enforced against a sitting Judge.

⁵ *Thong Ah Fat v PP* [2012] 1 SLR 676.

⁶ *The Road to Judicial Integrity*: interview with Dr. Lothar Jahn, Senior Planning Officer, Rule of Law, GIZ.

INTEGRITY AND THE JUSTICE SYSTEM OTHER KEY ACTORS

The words ‘judicial integrity’ at first blush seem to refer singularly to Judges or the Courts. This is logical and reasonable as the Judiciary plays a key role in upholding the Rule of Law. The Judiciary is the organ of government empowered to review and ultimately invalidate decisions of the executive or legislature which impinges on the Rule of Law. Without integrity, for example, the Judiciary will not be able to hold offenders accountable; without integrity, embezzled public money would remain lost and unrecoverable; and without integrity, human rights would serve as mere pious platitudes.

The administration of justice system however does not begin and end with the Judges. Viewed in a proper perspective, ‘judicial integrity’ does not and could not be confined only to Judges or court administrators, but includes every actor in the administration of justice system, namely the enforcement officers, prosecutors, accused persons, litigants, witnesses and lawyers. Justice truly prevails only when integrity percolates throughout all these levels of actors. I will in the later part of this speech, demonstrate that justice was not served due to lack of integrity on the part of such non-judicial actors.

There is no doubt that the public looks up to Judges to dispense justice. But Judges are not omniscient. Judges are human beings who are not infallible. Judges decide on a dispute and dispense justice according to the law as we understand the law to be. And we decide on the facts based on the evidence as led by witnesses. Witnesses are also human beings. Despite taking the oath to tell the truth, a witness may not be telling the truth after all, or may conceal some material facts which will affect our determination of the dispute.

If a litigant comes to court as a plaintiff pursuing a particular claim, or a defendant raising a particular defence, only the plaintiff would know whether what he is claiming for is rightfully or genuinely his. And only the defendant would know whether the defence that he is putting up is a bona fide or a sham defence. In the context of a criminal case, barring the evidence of a truthful eye witness, only the accused person would know whether he is indeed guilty of the offence charged.

Talking about other actors in the administration of justice, again from the Islamic perspective, it is interesting to note that where the holy Quran prohibits bribery, the prohibition is directed towards the givers and there is an emphasis on witnesses, where witnesses are commanded to speak the truth. For example, in Surah Al-Baqarah: verse 188:

“And eat up not one another’s property unjustly (in any illegal way, e.g. stealing, robbing, deceiving), nor give bribery to rulers (Judges before presenting your cases) that you may eat up a part of the property of others sinfully.”

Al-Baqarah: verse 282:

“O you who believe! When you contract a debt for a fixed period, write it down. Let not the scribe refuse to write down as Allah has taught him, so let him write. Let him (the debtor) who incurs the liability dictate, and he must fear Allah, his Lord, and diminish not anything of what he owes. But if the debtor is of poor understanding or weak, or is unable to dictate for himself, then let his guardian dictate in justice. And get two witnesses out of your own men. And if there are not two men (available), then a man and two women, such that you agree for witnesses, so that if one of them (two women) errs, the other can remind her. And the witnesses should not refuse when they are called (for evidence). You should not become weary to write it (your contract) whether it be small or big, for its fixed term, that is more just with Allah; more solid as evidence, and more convenient to prevent doubts among yourselves, except when it is a present trade which you carry out on the spot among yourselves, then there is no sin on you if you do not write it down. But take witnesses whenever you make a commercial contract. Let neither scribe nor witness suffer harm, but if you do (such harm), it would be wickedness in you. So be afraid of Allah; and Allah teaches you and Allah is all-Knower of everything.”.

This particular verse reminds me of the case of *Tindok Besar Estate Sdn Bhd v Tinjar Co* [1979] 2 MLJ 229, the oft-quoted authority on the principle that contemporaneous documents carry more evidential weight than oral evidence of witnesses.

Verse 283 of Surah Al-Baqarah is another authority that touches on the integrity of a witness. It says:

“And if you are on a journey and cannot find a scribe, then let there be a pledge taken (mortgaging), then if one of you entrusts the other, let the one who is entrusted discharge the trust (faithfully), and let him be afraid of Allah, his Lord. And conceal not the evidence, for he who hides it, surely, his heart is sinful. And Allah is All-Knower of what you do.”.

An-Nisa’: verse 135:

“O you who believe! Stand out firmly for justice, as witnesses to Allah, even though it be against yourselves, your parents or your kin, be he rich or poor, Allah is a better protector to both (than you). So follow not the lusts (of your hearts), lest you avoid justice, and if you distort your witness or refuse to give it, verily, Allah is ever Well-Acquainted with what you do.”.

Al-An’am: verse 152:

“And come not near to the orphan’s property, except to improve it until he (or she) attains the age of full strength, and give full measure and full weight with justice. We burden not any person, but that which he can bear. And whenever you give your word, say the truth even if a near relative is concerned, and fulfil the Covenant of Allah. This He commands you, that you may remember.”.

Permit me to share a few cases to shed some light on how the administration of justice has been undermined due to the lack of integrity of some actors in the administration of justice.

The first case that I wish to share is about an attempt to bribe a Judge that has gone awry. Four men acting in concert, killed Heng Pang Kiat (“Heng”) and had also almost killed Chong Chiew Nam (“Chong”). Chong, who was a former government servant, attached to the High Court, was slashed at the front and rear of the neck. He survived to tell the following tale.

Foo Sam Ming (“Foo”) was a lawyer. He was also a businessman and a former police officer. Foo was personally sued by a firm of architectural and development consultants. Foo lost the suit in the High Court. Dissatisfied with the High Court’s decision, Foo filed an appeal to the Court of Appeal. And Foo wanted a favourable outcome in the Court of Appeal.

Foo approached Chong to arrange for the fixing of a suitable panel in the Court of Appeal who could decide in his favour. Foo agreed to pay Chong RM10,000.00. After the appeal was heard and while the decision was pending, Foo again approached Chong and asked whether Chong could arrange for a favourable decision. As consideration for a favourable decision, Foo offered to pay upfront RM200,000.00 and a deposit of RM300,000.00 in Oriental Bank Johor Bahru.

Chong collected the upfront payment of RM200,000.00 from Foo at Ampang Condominium, Kuala Lumpur. The amount of RM300,000.00 was placed by Foo in a safe deposit box in Oriental Bank Johor Bahru in the joint account of Chong and Jagjeet Singh a/l Mewa Singh. Jagjeet Singh was an employee of Foo.

While the decision of the Court of Appeal was still pending, Heng, a good friend of Chong, managed to persuade Chong to withdraw the deposit. With the help of a Sikh imposter, Chong and Heng deceived the Oriental Bank’s officer who allowed them to open the safe deposit box and to take out the RM300,000.00. RM107,000.00 was taken by Heng and the balance by Chong, who thereafter gambled it away.

The above facts are reported in *Manikumar a/l Sinnapan & Ors v Public Prosecutor* [2017] 3 CLJ 505 where four accused persons were charged with Foo for the murder of Heng and for the attempted murder of Chong. The four were convicted and sentenced to death by the High Court. The convictions and sentences were affirmed by the Court of Appeal and Federal Court. Foo did not stand trial. He died a month after the murder. It was said that Foo fled to Australia and committed suicide.

The facts revealed above are a clear example that while the integrity of Judges has always been the focus of discussion, in reality, it starts with the litigants, who perhaps being very much aware that they did not have a good case, attempted to circumvent the judicial process. As a result, the Judges' integrity and reputation were being tarnished owing to no fault of their own and with no clue that monies had been paid purportedly for them to decide in a certain way.

As demonstrated in Foo's case, it was not the Judges who were corrupt but it was the litigant, Foo. Foo had offered to bribe the Judges to obtain a favourable outcome for his appeal in the Court of Appeal. God knows, in how many other cases had monies passed hands, not because Judges asked for the bribe but because the givers had been hoodwinked by some dishonest people using Judges' names. Whoever the givers are, they are utterly under the wrong belief that money could determine the outcome of their cases. Just for the record, in Foo's case, his appeal was unanimously dismissed by the Court of Appeal (see *Foo Sam Ming v Archi Environ Partnership* [2004] 1 CLJ 759).

The then Chief Justice, Tun Arifin Zakaria, at the Opening of the Legal Year in 2013, had asked lawyers and the public to "restrain from corrupting" the Judiciary, stressing that both the giver and the taker were equally guilty.

Clearly, to ensure that justice is truly served, it is not enough to only have Judges with impeccable integrity. We need litigants, witnesses and lawyers who are not corrupt, not only in the monetary sense but in the broader sense of the word.

The more senior ones among us might also recall the events surrounding the murder of beauty queen Jean Pereira in 1979 where her brother-in-law, Karthigesu was charged with the offence. The prosecution's case against Karthigesu rested mainly on circumstantial evidence and the statements of Bhandulananda Jayatilake, where Bhandulananda's testimony provided the main link which implicated Karthigesu in the murder. The High Court found Karthigesu guilty and sentenced him to death.

When Karthigesu's appeal came up before the Federal Court, he successfully obtained leave to adduce fresh evidence. The fresh

evidence was to come from Bhandulananda. Whilst giving fresh evidence, Bhandulananda confessed that he had told lies when implicating Karthigesu in the High Court trial. He said that he was asked by Jean Pereira's mother and brother and by a police officer and that he agreed to lie in court because he was then under mental stress. The Federal Court allowed Karthigesu's appeal and set aside the orders of the High Court.

Bhandulananda Jayatilake was later charged with giving false evidence with intent to procure Karthigesu's conviction. He pleaded guilty to the charge.⁷ In imposing a sentence of 10 years imprisonment, the learned Judge considered the seriousness of the offence. His Lordship Ajaib Singh J said:

“Witnesses giving evidence in court must never underrate the importance of speaking the truth. A court of justice is the sanctuary of truth where serious issues of law and fact are heard and determined. The law prescribes that witnesses on oath must tell the truth, the whole truth and nothing but the truth. True testimony alone will assist the court in arriving at a true verdict. It is most important therefore that people who appear as witnesses in court should never deviate from the truth for otherwise, they would be polluting the administration of justice and thus committing a serious wrong to the court and society. The obligation imposed on a witness to speak the truth under oath has the sanction of law. And very likely of religion as well. An oath which a witness takes in court is a solemn declaration by which the witness may well be invoking the wrath and vengeance of God in addition to any punishment which may be inflicted on him under the laws of the land if he does not speak the truth.

The accused was bound under oath to speak the truth. But he obviously had no intention whatsoever of respecting the sanctity of oath. Instead, he deliberately perverted the cause of justice by deceiving and misleading the Judge and jury with his false evidence.”.

⁷ Public Prosecutor v Bhandulananda Jayatilake [1981] 2 MLJ 354.

Bhandulananda was not happy with the sentence. He appealed to the Federal Court.⁸ In dismissing Bhandulananda's appeal, Raja Azlan Shah Ag. LP said:

"It cannot be gainsaid that the appellant had shown a wanton disregard for truth. The sanctity of an oath meant nothing to him. We therefore conclude that he had acted with malice and with the direct object of bringing the administration of justice into disrepute.

... it is a serious offence to give false evidence, for it is in the public interest that the search for truth should, in general and always, be unfettered."

In *Bok Chek Thou & Anor v Low Swee Boon & Anor* [1998] 4 MLJ 342, both the plaintiffs were found guilty and fined RM300.00 each for contempt in the face of the court. Both had admitted to having lied when giving evidence in court, in utter disregard for the truth, calculated to interfere with the due administration of justice.

I now move to the other actor in the justice system, i.e. lawyers. We have reported cases on lawyers who lacked integrity and who deceived the court and in so doing had broken the trust and confidence that the court placed them as lawyers.

In *Jaginder Singh*,⁹ three appellants who were lawyers and defendants in the High Court appealed to the Federal Court against their convictions and sentences for contempt of Court for misleading the trial Judge. Although the Federal Court set aside the order of contempt of Court due to among others, the learned Judge's failure to make plain to the appellants the specific nature of the charges and the opportunity to give them a fair hearing, I find the following reproduction by Raja Azlan Shah Acting LP of the judgment of the High Court worth quoting:

"The defendants' misdeeds are acts of contempt of the worst kind that the Court can possibly think of, because in seeking to achieve their evil and insatiable greed they made the Court the subject of

⁸ [1982] 1 MLJ 83.

⁹ *Jaginder Singh & Ors v the Attorney-General* [1983] 1 CLJ 69.

their deception and mischief ... The Court can dispense with justice only if Counsel will not mislead, otherwise justice will suffer from the infirmity of the Court itself being devoid of justice. People seldom pause to ask sometimes what safety the ordinary individual has in the hands of the lawyers if the Court itself, in which he seeks redress is no longer safe to be in the same hands. To me, the defendants' act is even more despicable because it is an expressed advocates and solicitors rule that Counsel should not practice deception on the Court.”.

In Cheah Cheng Hoc,¹⁰ Lee Hun Hoe C.J. (Borneo) said:

“It is very important for counsel to remember that whatever may be his duty to his client his duty to the court remains paramount in the administration of justice.”.

Lawyers are governed by a comprehensive code of conduct provided by rules promulgated under the Legal Profession Act 1976. Their level of integrity is measured by their adherence to the said code of conduct and lawyers must also not abuse the process of the court.

The circumstances in which the court's process may be abused are varied and numerous and the categories of such cases are therefore not closed. Essentially, the process of the court must not be used to accomplish some ulterior purpose. The process of the court must be used properly, honestly and in good faith. The court will certainly not allow itself to be misused. And, once an abuse of process has been detected, the court must intervene and this would be the very essence of justice.¹¹

Indeed, lawyers play a very significant role in the dispensation of justice. In the most recent judgment of the Federal Court in the Taman Rimba case, the Federal Court has stated:¹²

¹⁰ Cheah Cheng Hoc v Public Prosecutor [1986] 1 MLJ 299.

¹¹ Ganad Media Sdn Bhd v Dato Bandar Kuala Lumpur (No 2) [2002] 1 MLJ 508

¹² DBKL v Perbadanan Pengurusan Trellises (Civil Appeal No. 01(f)-13-09/2021(W)).

“[559] In order to dispense justice fully and properly, our adversarial system depends entirely on counsel to conduct themselves with candour, courtesy and fairness. Ours is a practice, where counsel owes, a primary duty to the court besides duty to their client.

[560] The duty of counsel to his client is subject to his overriding duty to the court, because it is in the public’s interest that there is ‘a speedy administration of justice’ and thus, a counsel’s duty to the court ‘epitomises the fact that the course of litigation depends on the exercise by counsel of an independent discretion or judgment in the conduct and management of a case’ to quote from *Giannarelli and Others v Wrath and Others* (1888) 81 ALR 417 (per Mason CJ, High Court of Australia).

[561] Our adversarial system can only properly function to administer justice, if there is full disclosure by all parties in their capacities as officers of the court. If the court’s hands are tied to the selective and piecemeal extraction of facts and law, the result is an artificial advancement of our law based on the private interests of a select few at the expense of justice for all.”.

When we speak of lawyers, we mean not just those from the Bar, but also from the Service. This includes the Federal Counsel and the Deputy Public Prosecutors. While their duties are to defend the State or State interests, they do so in the public interest and not in the interest of their divisions or any particular member of Government. In this sense, I can do no better than quote from the Federal Court in *Rosli bin Yusof*,¹³ when it said:

“[29] We begin with the discussion on the proper role of the prosecutor. The prosecutor in a criminal trial occupies a special position. His or her role is unlike the counsel for a party in a civil trial or counsel for the accused. Unlike other clients who have an interest in securing a conviction at all costs, prosecutors are often called ‘minister of justice’ and their role is to present the whole case to the court and assist the court in finding out where the truth lies. Due to their special role in criminal trials, the prosecutors are under

¹³ *Rosli bin Yusof v Public Prosecutor* [2021] 4 MLJ 479.

several well-defined duties including: (i) duty of disclosure (see s 51A of the CPC); (ii) duty to call all credible and relevant witnesses; and (iii) duty to conduct the case fairly...”.

There could be rare instances, perhaps in this country or other jurisdictions, in which prosecutors know that they have no case. But rather than making the decision not to prosecute, they leave it to the Court to make the acquittal. In a case of public interest and at the risk of public outrage, the idea behind this is to ‘pass the blame’ to the Courts who are merely performing their functions under the law. The basis for ‘passing the blame’, it seems, is so that the prosecuting officer’s image is not tarnished. One wonders whether this is the standard of integrity we wish to set where the liberty of a person is at stake and the Rule of Law reigns paramount.

INTEGRITY AND STRENGTHENING THE NATION

As observed by the Federal Court in *PCP Construction*, the courts of justice are the bulwark of a nation. The independence, impartiality and integrity of Judges are thus critically important in the administration of justice. Alexander Hamilton famously recognised, in the doctrine of separation of powers, that the legislature controls money, the executive controls force and the Judiciary controls nothing. It is on public confidence that the Judiciary depends, for the general acceptance of its judicial decisions, by both citizens and the government.¹⁴

Given its critical importance, we must all strive to preserve judicial integrity. Preserving judicial integrity requires a concerted effort by all actors in the administration of justice system as well as all branches of the government.

In my view, one of the measures to preserve judicial integrity is for everyone to respect the decision of the court. A losing party may not agree and will be unhappy with the court’s decision rendered against him. But in the pursuit of law and order and in avoiding an anarchic state, the judicial process must be respected and decisions of

¹⁴ *PCP Construction Sdn Bhd v Leap Modulation Sdn Bhd* [2019] 6 CLJ 1.

the court must be accepted, regardless of whether one agrees with it or not.

Linked to the need to respect and accept court decisions would be the need to observe the doctrine of separation of powers. As decided by the Federal Court in the case of *Dhinesh*,¹⁵ the doctrine of separation of powers is housed in Article 4 of the Federal Constitution.

In fact, Article 4 is a very powerful constitutional provision from which, among others, the Judiciary derives its judicial power, which includes power to judicially review acts of the executive and legislature that transgress the Federal Constitution. In the context of the primary function of the Judiciary, once a matter has been brought to and ultimately decided by the court, no other branch of government has to right to deliberate and canvass the matter or to ignore the decision of the court. That deliberation and decision-making rightfully belong to the domain of the Judiciary. For the other branches of government to deliberate on a matter already decided by the court would be to usurp the function of the Judiciary and tantamount to encroaching upon the doctrine of separation of powers.

The legislature serves as a crucial source of oversight and legitimacy of the Judiciary. However, a pertinent point to note is that the legislature, in exercising this power, must support the independence of the Judiciary and not meddle with the judicial power and process. It is also for this reason that the Federal Constitution makes it clear that neither House of Parliament shall discuss the conduct of a Judge of the Superior Court except on a substantive motion of which notice has been given by not less than one-quarter of the total number of members of that House.¹⁶

The Code is testament to the legislature's support of judicial independence and integrity in Malaysia. In providing for a specific mechanism to deal with the Judges' conduct and discipline, the Code aims to "enhance transparency and to improve the image and integrity

¹⁵ *Dhinesh, a/l Tanaphll v Lembaga Pencegahan Jenayah & Ors* [2022] 3 MLJ 356.

¹⁶ Federal Constitution, Article 127.

of the Judiciary.”¹⁷ Undoubtedly, the Code is a significant tool in establishing and preserving judicial integrity.

Political interference is a form of corruption that undermines judicial integrity. Political interference may take place through the appointment of Judges and/or intimidation of Judges. As one may observe, the Prime Minister has much power in appointing Judges as the current system of appointment is a convergence between the selection of candidates by the Judicial Appointments Commission and the approval /advice of the Prime Minister.

For our purpose today, I will deal briefly with intimidation of Judges. Without alluding specifically to the various statements made by some members of the executive, post the Federal Court’s decision in SRC’s case in August 2022, it is apparent that they had complete disregard of the judicial process, and by extension, the Federal Constitution. It is perhaps timely that every member of the executive, legislature as well as the Judiciary be reminded of their oath of office to protect, preserve and defend the Federal Constitution and behave in a manner consistent with that oath.

A strong, independent and impartial Judiciary is a cornerstone of the Rule of Law and of a democratic state while judicial integrity acts as a formidable foundation for strengthening Malaysia, nurturing a just society and charting a course towards a thriving future for every citizen. The impact of judicial integrity on our nation can be seen through the following dimensions:

- (i) By safeguarding the fundamental rights/liberties of the citizens;
- (ii) By fostering social harmony of the society; and
- (iii) By contributing to the economic stability of the country.

The first dimension, i.e. safeguarding the fundamental liberties, is especially pertinent when courts adjudicate cases involving human rights and fundamental liberties as encapsulated in Part II of the Federal

¹⁷ Parliamentary debates: *Penyata Rasmi Parlimen Dewan Rakyat, Parlimen Kedua Belas Penggal Kedua Kesyuarat Kedua*, DR (15 December 2009) 22.

Constitution. In this regard, judicial integrity demands that we construe constitutional provisions which safeguard fundamental liberties less rigidly, more generously than ordinary legislation, broadly and in a prismatic fashion so as to give effect to those fundamental liberties.¹⁸ Judges with unimpeachable integrity will uphold these trite principles and interpret the law in a manner that upholds fundamental liberties even when such interpretation is met with controversy or disapproval.

On the second dimension, judicial integrity plays a pivotal role in fostering social harmony in Malaysia by Judges undertaking the judicial tasks without identification of any particular race, religion or gender. By steadfastly adhering to these core values, society is assured that the principles of justice are consistently applied and the judicial process is grounded in fairness. The likelihood of social discord borne out of perceived or actual prejudices and/or injustices is significantly diminished. This in turn, fosters a sense of unity, solidarity and cohesion, reducing the potential for social unrest among Malaysia's multi-racial and multi-religious population.

Moving on to the third dimension of economic stability, judicial integrity also contributes to the betterment of governance and the delivery of public services. When there is access to justice; when contractual terms and obligations are enforced; when the rights of investors and other minorities are protected and when Judges are honest, fair and impartial, it will create a stable and predictable environment, which promotes better business environment which in turn attracts investors and leads to the economic stability.

The absence of arbitrariness and the presence of a reliable legal framework and an effective forum for resolving disputes that protects the investors' rights will invariably be conducive to strengthening the nation.

¹⁸ Dato' Menteri Othman bin Baginda & Anor v Dato' Ombi Syed Alwi bin Syed Idrus [1981] 1 MLJ 29; Lee Kwan Who v Public Prosecutor [2009] 5 MLJ 301; and CCH & Anor (on behalf of themselves and as litigation representatives of one CYM, a child v Pendaftar Besar bagi Kelahiran dan Kematian, Malaysia [2022] 1 MLJ 71).

CONCLUSION

To conclude, I would reiterate firstly that it is not only Judges, but every actor in the administration of justice system as well as members of the other organs of government who need to uphold the value of integrity; secondly that judicial integrity depends to a large extent on the executive respecting the principle of judicial independence, and thirdly, it goes without saying that public confidence in the integrity of the Judiciary would erode if Judges were to be constantly exposed to ill-founded and unjustified comments.

I think it is opportune that I quote His Royal Highness, the Sultan of Selangor from a statement issued dated 12 September 2022, which in its original language reads, in part:

“Perlembagaan Persekutuan telah meletakkan martabat Institusi Kehakiman di satu tahap yang tinggi sebagai sebuah badan yang bebas dan berwibawa. Badan Kehakiman merupakan benteng terakhir yang perlu dipertahankan bagi memastikan pentadbiran keadilan dapat dilaksanakan dengan sebaiknya.

Rakyat perlu mengambil maklum bahawa Hakim-hakim Mahkamah Persekutuan, Mahkamah Rayuan dan Mahkamah Tinggi adalah dilantik oleh Yang di-Pertuan Agong setelah mendapat nasihat daripada Perdana Menteri dan selepas berunding dengan Majlis Raja-Raja sebagaimana peruntukan Perkara 122B Perlembagaan Persekutuan. Malah Perdana Menteri sebelum memberikan nasihat kepada Yang di-Pertuan Agong berkaitan dengan pelantikan seseorang Hakim hendaklah terlebih dahulu berunding dengan Ketua Hakim Negara dan perlu mendapat pengesyoran dari Suruhanjaya Pelantikan Kehakiman. Proses lantikan seseorang hakim yang perlu melalui proses yang teliti ini menunjukkan Badan Kehakiman berbeza dengan institusi- institusi kerajaan yang lain dan menggambarkan betapa pentingnya peranan Badan Kehakiman di dalam sistem pemerintahan negara.

Kebebasan kehakiman membawa pengertian bahawa para hakim yang mengadili sesuatu kes dapat mentafsirkan undang-undang bersandarkan semata-mata kepada fakta dan keterangan tanpa rasa takut, pilih kasih dan bebas daripada sebarang pengaruh yang tidak diingini. Seseorang Hakim telah mengangkat sumpah untuk mengamalkan kesamarataan, memelihara, melindungi dan mempertahankan Perlembagaan serta bebas dari segala bentuk tekanan dalaman dan luaran. Perlembagaan Persekutuan dengan jelas telah memperuntukkan bahawa semua rakyat adalah sama rata di sisi undang-undang. Ini bermakna bahawa rakyat, tidak mengira status, jawatan, bangsa dan keturunan adalah tertakluk dan bertanggungjawab kepada undang-undang yang sama.

Setiap rakyat di Negara ini berkehendakkan keadilan, kesaksamaan serta ketelusan daripada Badan Kehakiman atas sesuatu kes yang diadili. Oleh itu adalah menjadi tanggungjawab semua pihak untuk sentiasa memelihara nama baik Badan Kehakiman agar ianya tidak tercemar dari sebarang bentuk pengaruh dan tekanan. Beta mengambil kesempatan di sini untuk mengingatkan pihak Eksekutif agar sentiasa mendukung penuh prinsip kebebasan kehakiman dan mengelak dari sebarang cubaan untuk mempengaruhi proses pentadbiran keadilan Badan Kehakiman.”.

It would do well for the nation if everyone takes heed of what His Royal Highness has said for, I am sure that if the Late Tan Sri Harun Hashim was here with us today, he would have respectfully concurred.

I would like to end by leaving you with this. The members of the justice system (with all its actors) are seen to be the more virtuous ones in society. They are thus entrusted with the highest level of integrity. If the Judiciary, the Bar, Chambers or even law enforcement lack integrity, it provides little to no encouragement to those who are guided by our decisions to respect them, or worse still, to maintain their own sense of integrity. And so, ours is not the case where the pot can afford to call the kettle black.

On my part, I shall continue to do my utmost to keep the Judiciary on the path of integrity. I truly believe that if the Judiciary remains strong, all the other branches of Government will continue to adhere to the Rule of Law. The nation will, consequently, be strong.

I thus enjoin all of you to continue to support me and the Judiciary, in this pursuit.

Thank you.