

## **SPEECH BY**

**THE RIGHT HONOURABLE THE CHIEF JUSTICE OF MALAYSIA,  
TUN TENGKU MAIMUN BINTI TUAN MAT**

**ON THE OCCASION OF**

**THE OPENING OF THE LEGAL YEAR 2025 ('OLY 2025')**

**WEDNESDAY, 8 JANUARY 2025**

**PUTRAJAYA INTERNATIONAL CONVENTION CENTRE ('PICC')**

### **SALUTATIONS**

Brother and Sister Judges;

Your Excellencies;

Distinguished guests;

Ladies and gentlemen,

Assalamualaikum warahmatullahi wabarakatuhu and a very good morning.

### **INTRODUCTION**

[1] I would like to begin by thanking each and every one of you for gracing us with your presence on this august occasion of the Opening of the Legal Year 2025.

[2] With the onset of the New Year and new beginnings, I would like to congratulate each and every Judge who was appointed in the last year.

At the same time, I would like to wish all Judges who retired in the past year, a very happy retirement.

## **THE OATH OF OFFICE**

[3] While a big congratulations go out to everyone who has been appointed as Judges, especially to the apex Court, there is little or no reason for anyone to begrudge you. As a Judge, you have taken the Oath of Office to protect, preserve and defend the Constitution of Malaysia. It is the most formidable and “painful” of oaths.

[4] By taking up Judge-ship, let me remind you of its implications. You have agreed to live a life of solitude and you have relinquished loyalty to any institution apart from the Judiciary and the Federal Constitution (‘Constitution’). You have agreed to become the perfect citizen who accommodates no advice and adheres to no one’s instruction apart from the dictates and mandates of the Constitution and the law. You know politics, carry out your duty as a voter, but take no part in it, in any way, shape or form. You are tasked to do justice by the law but at the same time, you have become dispassionate to all manner of sufferings, plights and pain as these are only secondary to the law.

[5] A case, no matter its size, no matter the litigant, no matter the external circumstances, no matter the price, no matter the interest and certainly no matter your personal view, is ancillary to what the law and facts demand.

[6] You, as a person may feel strongly averse to the death penalty. But when the facts of the case require it, you must pass the sentence. You

may not like the people or ethics behind a dubious corporation, but when the facts support it, pass judgment in their favour. As a mother, you may feel the pain and suffering of another mother who stands to lose her children, but where the facts require it, you must remove that child from her.

[7] Being a Judge is a tireless, thankless, and a challenging profession. No matter which way you decide, there will always be at least one disgruntled party. You are constantly under watch and scrutiny not only from the litigants that seek justice before you but from the entire public that remunerates you and trust that you will set aside your own persona, your own ideals, and your own personal biases in favour of something much larger than you: the Constitution and the law.

[8] For those of you who think that being a Judge is effortless or a “simple” job let me enlighten you of its reality.

[9] In a civil or commercial setting, you are faced with hundreds of cases with all of them disclosing various complex issues all of which you must make every effort to understand. You face complex shareholder disputes, oppression and winding-up petitions which concern the interests of not only the petitioner but of creditors, secured and unsecured such as employees, and in some cases, investors that include members of the public. You might have to consider prolix defamation pleadings, injunction applications or even technical intellectual property disputes. In each of these cases, documents may run into thousands of pages.

[10] In a criminal trial, you are faced with mostly charges that involve the death penalty. Not to mention the High Court has to deal with trials or

appeals (almost on a daily basis) containing harrowing facts and images involving gruesome murders, sexual abuse and rape cases especially those involving children, and having to unravel the complex web of anti-money laundering and other corruption cases.

[11] Family Court Judges, deal with acrimonious divorce petitions sometimes leaving the Judge almost drained with having to confront the distressing emotions involved. Having to interview small children and sometimes needing to ask them whether they wish to stay with their father or mother on an almost daily basis is not something someone with a conscience can manage mentally for too long. And in some cases, you will find that neither the father nor the mother is fit to be a parent and yet you have to choose for the child to live with either the devil or the deep blue sea. But decide you must.

[12] These examples can go on *ad infinitum*.

[13] Those who have been lawyers would have had the option of finishing a case and getting paid for it. However, as a Judge, a case you dealt with once or twice as a lawyer might become routine. You are no longer acting for your client; as a Judge you now have to deal with the issues from a different perspective. You are resolving the issues objectively with your experience and inside knowledge as a former advocate.

[14] In a criminal case, you are no longer defence counsel. You must be able to remove yourself from such a notion and convict the very kinds of people you once worked to defend.

[15] If you had been in the public service, you would have adhered to the maxim of serving the nation, not the Government. As a Judge, you will constantly find the Government suing or being sued, and you must continuously remind yourself that serving the interest of your nation is not the same as allowing the Government a win in every case.

[16] I speak today as the outgoing Chief Justice of Malaysia. My colleagues and I have, in at least one part of our judicial careers, faced these challenges. Additionally, as Chief Justice, I have carried the burden, image and overall responsibilities of the Judiciary for almost six years. And, what a task it has been – one that I do not envy the next person who should carry it.

[17] As Chief Justice, I have been criticised, vilified, been labelled un-Islamic or an enemy of Islam, my husband (unfairly so) has been used against me in some applications to not only have me recused but more generally, to embarrass me and my colleagues. None of them have or ever will pass the test of my conscience, and praise be to Allah, I have not once lost sleep over these comments.

[18] When I was appointed the first female Chief Justice of Malaysia, someone asked me: what would you do, if the Executive, or any other influential party demands that you decide a case in a certain way. What would you do if (history were to repeat itself) you are faced with requests to appoint certain persons as Judges or make decisions that you know to be wrong in law but right for the party with the vested interest? Before I answer the question, let me stress this: a Judge whether male or female must always decide justly, fairly and objectively.

[19] I am happy to share with you today what my answer to that long question was, and still remains till today. It is this.

[20] I am here to do my job. I never coveted it, but by the Grace of Allah SWT, I was entrusted to lead the Judiciary. It is an extremely intimidating position to hold, but upon accepting the appointment, I am fully committed to doing it properly. I will not bend or bow to any person no matter how high and mighty, to do what he or she demands of me. My only master is Allah SWT. I have utmost faith in my religion which holds me accountable only to Allah on Judgment Day. I always intend on fulfilling my Oath of Office especially in ensuring the Constitution reigns supreme and I am guided by no other considerations than the law and the facts of any case within the bounds of judicially established principles.

[21] In the soon-to-be six years within which I have served as Chief Justice, I have held firmly to the belief that what needs to be improved shall be improved and what does not need to change shall remain. I do not believe that each time a person takes office, they have to override or cancel past policies that have proved useful for the sake of doing so. In this regard, I have retained whatever policies that were left behind at the time I took over that enhanced the judicial institution.

[22] As you recall, a lot has happened in the past six years alone than the decade before it, combined. Only a year into my tenure in 2020, we were hit with the Covid-19 pandemic. Everything was put on hold and everyone was told to stay at home but we all knew that justice cannot come to a standstill.

[23] We embarked upon digitalisation and judicial modernisation as early as 2009 under the leadership of the then Chief Justice, Tun Zaki bin Tun Azmi. But in just the one year between 2020 and 2021, with the help of all the right parties including Parliament, the Bar and the AGC, the Malaysian Judiciary did more for the cause of technology than it could have done in the ten years between 2009 and 2019.

[24] Our country was also faced with constitutional issues beginning with the then Prime Minister's resignation in 2020. What then followed was a series of constitutional suits concerning among other things, a declaration of emergency in face of the pandemic, and overall, everyone witnessing the Constitution being tested to its limits.

[25] Generally, it has been an eventful almost six years. I think it is natural for anyone who has been through such an eventful period to feel wistful at the prospects of retirement. However, I, more than feeling sad, instead feel an overarching sense of relief. I am looking forward to retirement as I sincerely believe that I will get to leave the Judiciary in a better place from when my colleagues and I led it, with a chance to spend more time with my grandchildren and to deepen my connection to my faith.

[26] As such, in this last OLY speech of mine, I enjoin you to reflect upon two things that I believe to be of paramount importance moving forward.

[27] The first of these is the state of our constitutional law. The second has to do with judicial appointments.

## **THE FEDERAL CONSTITUTION AND THE RULE OF LAW**

[28] Arguably the most important and foundational features of the Constitution are Articles 4(1), 5(1) and 8(1). The latter two jointly guarantee the right to life and personal liberty, and equality before the law. The former ensures that the Constitution reigns supreme and that any law passed after Merdeka Day is void to the extent that it is inconsistent with the Constitution.

[29] We must remember that unlike many other written constitutions, ours was not won from Great Britain on the battlefield or drafted after a bloody internal revolution. It was negotiated by our leaders of the time.

[30] In the United Kingdom, they effectively only have one rule which forms their unwritten constitution – and that is ‘Parliament is Supreme’. This means that Parliament, as the collective representative of the People, has the supreme power to make any law even to the extent that it changes fundamental constitutional provisions in Great Britain. The constitution and the law there, is, in effect, whatever Parliament says it is.

[31] The same is not true here. Here, Parliament is not supreme. Here, Parliament itself is enacted by the Constitution and its powers are demarcated between itself and the State Legislatures. While these legislative powers are broad, they remain circumscribed and expressly enumerated in legislative entries to the Ninth Schedule of the Constitution.

[32] When I took office as Chief Justice, three celebrated judgments had already been pronounced by the Federal Court. These are, as you know:

firstly: *Semenyih Jaya*;<sup>1</sup> secondly: *Indira Gandhi*;<sup>2</sup> and finally: *Alma Nudo* ('The Trilogy of Cases').<sup>3</sup>

[33] These cases collectively held, what I believe, is right in law which is that the supremacy of the Constitution is exercised by the Superior Courts as the only collective body with the inherent power to do justice by interpreting the Constitution. It was essentially held in the Trilogy of Cases that judicial power cannot be curtailed in the way the amended Article 121(1) suggests. What these cases cemented is what is now known as the doctrine of constitutional supremacy; in that any law passed by Parliament, even law seeking to amend the Constitution, can be struck down as being void.

[34] In the years that followed the Trilogy of Cases, we saw numerous challenges to ouster clauses. In opposing the challenges, the argument advanced was that the constitutional amendments made in 1988 effectively whittled down judicial power in Article 121(1) such that the Courts were required to abide by and their powers be circumscribed by federal law.

[35] Sometime into my tenure, the Federal Court finally held in two cases i.e. *Nivesh Nair*,<sup>4</sup> and *Dhinesh Tanaphill*<sup>5</sup> that Article 121(1) cannot be read in the way it was once read to make the Courts subservient to Parliament. These decisions were not based on a new invention. They

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<sup>1</sup> *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat & Another Case* [2017] 5 CLJ 526 ('Semenyih Jaya').

<sup>2</sup> *Indira Gandhi Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 3 CLJ 145 ('Indira Gandhi').

<sup>3</sup> *Alma Nudo Atenza v PP & Another Appeal* [2019] 5 CLJ 780 ('Alma Nudo').

<sup>4</sup> *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 ('Nivesh Nair').

<sup>5</sup> *Dhinesh Tanaphill v Lembaga Pencegahan Jenayah & Ors* [2022] 3 MLJ 356 ('Dhinesh').

were decided purely upon the application or expansion of principles established in the Trilogy of Cases.

[36] As such, the constitutional decisions in the past six years have only permanently endorsed the notion that there are 'basic features' of the Constitution that cannot be altered or taken away even by way of a constitutional amendment. And, that even if such a constitutional amendment was made, it can be struck down under Article 4(1).

[37] Since then, many have come to misunderstand these decisions. Some misinformed parties take the position that these cases mean that Parliament cannot ever amend the Constitution. I shall not repeat the explanations given in recent judgments that clearly explain why this position is wrong. But I will say this.

[38] The Constitution is not just a mere collection of words. It is a blueprint as much as it is a living reminder of our history. Due to the nature of its founding, including the fact that the Constitution renders Parliament subordinate to it, the Constitution is greater than the sum of its words.

[39] Upon an examination of the historical documents and the circumstances of the formation of Malaya and later Malaysia, it is surmised that some fundamental features of the Constitution include Islam as the religion of the Federation; the supremacy of the Constitution; the national language of the Federation; the special position of the Malays and natives of any of the States of Sabah and Sarawak; a democratic constitutional monarchy with three branches of Government being the Executive, the Legislatures (Federal and State) and an entirely

independent Judiciary; and the written guarantee of fundamental rights as well as their protection. These categories are not closed.

[40] To whittle away any of these features would be to destroy the essence of the Constitution itself. It does not mean Parliament cannot amend the Constitution. The procedure for this is clear. What it *does* mean is that Parliament, being subordinate to the Constitution, cannot (even with the requisite majorities and consents) directly or indirectly eradicate these features at the risk of destroying the Constitution and Malaysia itself. It means that Parliament cannot, at any time use the constitutional procedure for amendment by, for example, eliminating the special position of the Malays, abolish the monarchy, or even for that matter, remove Islam as the religion of the Federation. The existence of this doctrine of constitutional supremacy that upholds not just the words and explicit provisions of the Constitution but protects its spirit, implied principles and design, is an indelible principle of our Rule of Law.

[41] This is where the ouster clause cases come into sharp focus. Who is to ensure that the Constitution is preserved and its supremacy upheld? It must be the Superior Courts. Ouster clauses were challenged on the ground that they insulated the Executive from any form of meaningful review by the Courts. The argument in support of their constitutionality was premised on the ground that the Courts were, in effect, bound to comply with the ouster clauses under the amended Article 121(1) as they are federal law.

[42] It is for this reason that the amendment to Article 121(1) was argued to be unconstitutional and that it ought to be struck down under the doctrine of constitutional supremacy which was earlier known as the 'basic

structure doctrine'. Recent decisions ultimately held that the amendment to Article 121(1) was not unconstitutional because when read in its proper context with Article 4(1), the amendment did not abridge judicial power.

[43] In this regard, while Article 4(1) rendered all laws in violation of the Constitution void to the extent of their inconsistency, in effect, such a declaration of supremacy would be meaningless if federal law (in the form of ouster clauses) could come in the way of any assessment of the validity of laws so passed or any Executive actions taken in the name of those laws.

[44] The application of the doctrine of constitutional supremacy is not just confined and applicable to the Judiciary through Article 121(1). Although litigation on this doctrine has mostly been in respect of Article 121(1), the application of the constitutional supremacy bears implications to constitutional features far deeper than that such as to all aspects of our government, our governance, and our constitutional identity that collectively make Malaysia the country it is.

[45] In the last six years, litigation and judicial decisions have affirmatively determined that the doctrine of constitutional supremacy is here to stay. Litigation should only develop now to the extent of what those features include and whether they have been eroded in anyway. Any future decision that denies the existence of the doctrine of constitutional supremacy or which seeks to re-establish now overruled cases that dismissed the doctrine would amount to a major regression in the development of our constitutional jurisprudence.

[46] Apart from the doctrine of constitutional supremacy, there have been other significant constitutional developments. For instance, the Federal Court decision in *CCH*,<sup>6</sup> has strengthened the plight of stateless children who were found to be abandoned at birth and whose mothers cannot be identified. This decision I believe, has re-established the scope and extent of all the applicable constitutional provisions as well as the principles that must apply to the most basic of rights, the right to citizenship.

[47] Still in the realm of constitutional law, the last six years have also seen major litigation on the extent and scope of powers of the Federal and State Legislature. These decisions include the judgments of the Federal Court in *Iki Putra*,<sup>7</sup> *SIS Forum*,<sup>8</sup> *Wong Shee Kai*,<sup>9</sup> and *Nik Elin*.<sup>10</sup>

[48] As mentioned earlier, Parliament and the State Legislatures are the creations of the Constitution and their powers of legislation are circumscribed by the Ninth Schedule. Apart from what is contained in the Concurrent List, the Constitution is more than clear that absent certain circumstances that were inapplicable in those cases, Parliament or the State Legislature cannot make laws on matters that fall within the purview of the other.

[49] In all those decided cases, the simple and straightforward question was whether the State Legislatures in those cases were empowered to make certain criminal laws. It was found, as has always been the case, that only Parliament can make criminal laws of a general nature to be

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<sup>6</sup> *CCH & Anor v Pendaftar Besar bagi Kelahiran dan Kematian, Malaysia* [2022] 1 MLJ 71 ('CCH').

<sup>7</sup> *Iki Putra bin Mubarrak v Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 323 ('Iki Putra').

<sup>8</sup> *SIS Forum (M) v Kerajaan Negeri Selangor (Majlis Agama Islam Selangor, intervener)* [2022] 2 MLJ 356 ('SIS Forum').

<sup>9</sup> *Wong Shee Kai v Government of Malaysia* [2022] 6 MLJ 102 ('Wong Shee Kai').

<sup>10</sup> *Nik Elin Zurina bt Nik Abdul Rashid & Anor v Kerajaan Negeri Kelantan* [2024] 2 MLJ 150 ('Nik Elin').

applied to all citizens. The States in those cases justified those laws on the ground that they only made those laws in respect of Muslims in those States.

[50] Upon an analysis of the pith and substance of those laws, the Federal Court agreed in all those cases that the laws in question (not all in *Nik Elin*) were not only applicable to Muslims in principle but pertained to general criminal laws. On this basis, and consonant with Article 4(1) of the Constitution, the Federal Court did its duty by striking down those laws for being in excess of the powers of the State Legislatures to make those laws and which powers rightfully belong to Parliament.

[51] That is all it was. Yet, you would invariably have seen that some parties spun those decisions to appear as if the Judiciary or some Judges within it, including me, are anti-Islam. Some even questioned my faith as a Muslim.

[52] I wake up every day praying and hoping that the most beneficent and most Merciful Allah SWT accepts my *'ibadah* and deeds. It is not for me to question the faith of others because in the first place I will never know, until the Day of Reckoning, whether Allah SWT has accepted my own.

[53] And so, I will not bring myself to stoop down the level of these scurrilous attacks and instead, my only response to them is this one rhetorical question: for those of you who have the time to question the faith of others, are you confident enough that Allah as the Sole Judge, has accepted your own *'ibadah* and deeds such that you have now been ordained the standing to question mine and of others?.

[54] I stand firmly by what it is I do as a Judge and Chief Justice and I will continue to believe in what is right. The spin doctors, naysayers and critics can say what they will and turn something noble into a purported vilification of Islam. But in the end, I hold dearly to the dictates of Allah as per the Holy Al-Quran:

“O ye who believe! stand out firmly for justice, as witnesses to Allah, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lusts (of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do.”. [Al-Quran, 4:135, Yusuf Ali]

[55] Apart from constitutional law, there have also been significant developments in the realm of civil law and criminal law. There are too many to state. I will say that at least in my Court and with my colleagues, every personality regardless of his or her status, has been accorded like treatment and has received judgment appropriately. This has been the case in spite of all and any attempts to stymie or stifle the course of justice.

[56] I am not the only one who is soon to retire. Many of my esteemed colleagues will soon retire as well. We will leave you to judge whether the landmark cases that have been passed in all fields in the last six years, have met the standards of justice. All we can do now is entrust all future generations of Judges, lawyers, prosecutors and federal counsel to further progress the development of the law in line with established principles. It is here that I wish to remind Judges to remember their oaths of office and adhere strictly to the doctrine of stare decisis.

## **JUDICIAL APPOINTMENTS**

[57] The second and final aspect of my focus is the topic of judicial appointments. This topic is of paramount importance for the following reasons.

[58] Firstly, the very building blocks of the judicial institution are its Judges. A Judge must not only be qualified on paper but must carry with him or her the right temperament, physical stamina and the mental courage to deal with the high demands of the duties of their office. If the wrong persons are appointed, the very course of justice stands to be averted. It is almost impossible to build a resolute and entirely independent institution if its lead actors are not poised to play the part required of them.

[59] Secondly, we cannot deny the blemish in our history – that was the 1988 Judicial Crisis. This one crisis itself tarnished the independence of the Judiciary and paved the way for further incursions into the Institution. In its aftermath, we also witnessed completely unsettling events that are known as the infamous VK Lingam Tapes. Most heinously, revelations were made that certain persons were literally deciding on who should become Judges specifically as a means of reward, as though appointments of judges can be used as bargaining chips. This event called for an independent judicial appointments process to ensure that tarnished candidates do not stand a chance of appointment.

[60] Prior to 2009, the judicial process was rather simplistic in the sense that it was only based on a few provisions of the Constitution. Without getting too technical, when it comes to the appointment of ordinary

Superior Court Judges, the Prime Minister tenders his advice to the Yang di-Pertuan Agong ('YDPA') upon consulting the Chief Justice and after conferring with the Conference of Rulers.

[61] This process underwent a radical shift in 2009 with the introduction of the Judicial Appointments Commission Act 2009 [Act 695] ('JACA 2009') which established the Judicial Appointments Commission or as it is more commonly referred to: 'JAC'.

[62] What I am about to share with you next are not my personal views but actual discussions that took place in the Dewan Rakyat regarding the passing of the JACA 2009.

[63] The need for the JACA 2009 were grounded on many allegations and attacks against the Government<sup>11</sup>. Pertinently, many members of the opposition appeared to express the sentiment that the introduction of the Bill to the JACA 2009 was merely a cover up for all the past appointments that had been made. I invite each and every one of you to scrutinise the Hansard for 16.12.2008 and 17.12.2008.

[64] Most of all, I find relevant the views of the then recently appointed Leader of the Opposition and current Prime Minister of Malaysia, Dato' Seri Anwar bin Ibrahim who expressed strong views on the VK Lingam incident. Dato' Seri Anwar Ibrahim concluded then that the JACA 2009 (in his view) was not enough to restore the independence of the Judiciary<sup>12</sup>. He went on to observe that there is a perception that persons who had decided in favour of the Government were promoted.

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<sup>11</sup> DR17122008, at p. 14.

<sup>12</sup> DR17122008, at p. 5.

[65] Dato' Seri Anwar Ibrahim's observation then, relates directly to the fundamental aspect of judicial independence, in that perception plays a big part in it. The public cannot be expected to have confidence in the judicial institution no matter how hard its Judges work if the pervading public perception is that Judges are appointed or elevated upon the favour of making decisions that by default support the Government or certain business interests.

[66] When things like this happen, it is very similar to if not worse than the lessons in the children's parable of the boy who cried wolf. Cry wolf wantonly could backfire when no one believes you when the wolf actually arrives to eat the sheep. Applying it to us, making the irredeemable mistake of rendering one decision coloured with bias, or appointing one candidate that is only chosen as a favour, throws into question the integrity of the entire Judiciary and none of the decisions delivered after that will engender the public confidence and trust, even if that decision is absolutely correct on the facts and the law.

[67] It takes decades to instil a steady level of trust and confidence in the Judiciary. Judges work hard with considerable commitment towards this end. And since 2016 until now, that goal has largely been realised. Malaysia has improved on all major Rule of Law and judicial independence indices. In 2023, Malaysia ranked 55<sup>th</sup> out of 142 countries worldwide in our Rule of Law ranking, being among the minority of countries whose rankings improved in that year – a significant 23 place improvement from 2016<sup>13</sup>. It is important to acknowledge that these are not merely statistics or empty figures. They denote the reality of how the

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<sup>13</sup> World Justice Project Rule of Law Index

country is viewed for purposes of investment, and are requisites for economic and social progress. The best evidence of this is the research of the 2024 Nobel Prize Winners for Economics whose research can briefly be summarised as empirically demonstrating the importance of strong institutions, a key one being the Judiciary, in fostering long term and sustainable economic growth.<sup>14</sup> To maintain this reputation, it is imperative that judicial independence which is central to the Rule of Law, be upheld and enhanced.

[68] From 1988, it is only now that we are on the road to recovery in terms of our perception of independence. Incidentally, 15 years ago, before the JACA 2009 was enforced, the then leader of the Opposition made the comments that he did, as reflected in the Hansard, on the appointment of Judges and judicial independence. I am certain that now, as Prime Minister, Dato' Seri Anwar Ibrahim and his Government will remain true to those comments by continuing to unreservedly remain committed to upholding the cause of judicial independence.

[69] In spite of the many criticisms levelled against the JACA 2009 in the debates prior to its passing, the JACA remains in force. The purpose of the Act, as was clarified by the then Government when moving the Bill, was not to change the constitutional mechanisms of appointment of Judges, but to further streamline and enhance the selection of candidates for judicial appointment<sup>15</sup>.

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<sup>14</sup><https://www.nobelprize.org/prizes/economic-sciences/2024/press-release/#:~:text=This%20year's%20laureates%20in%20the,or%20change%20for%20the%20better.>

<sup>15</sup> DR17122008, at p. 59:

“Untuk makluman Ahli-ahli Yang Berhormat, rang undang-undang ini mengadakan peruntukan mengenai pemilihan calon-calon untuk dikemukakan kepada Yang Amat Berhormat Perdana Menteri untuk Dilantik ke jawatan hakim-hakim mahkamah atasan. Rang undang-undang ini

[70] Viewed in this way, the provisions of the JACA 2009 and the establishment of the JAC is seen as a measure to supplement and complement the constitutional provisions on the appointment of Judges of the Superior Courts.

[71] The JACA 2009 statutorily prescribed selection criteria for potential candidates for judicial appointments. These criteria are evaluated by JAC members who *ex-officio* comprise the Chief Justice, the President of the Court of Appeal, the Chief Judges of the two High Courts, and members appointed by the Prime Minister namely one Federal Court Judge and four eminent persons.

[72] Typically, these four eminent persons are appointed from among the academia or from the pool of retired Judges. These four eminent persons cannot be members of the executive or other public service and are appointed by the Prime Minister after consulting the Bar Council of Malaysia, the Sabah Law Society, the Advocates Association of Sarawak, the Attorney General of the Federation and the Attorney General of a State legal service.

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tidak menyentuh prerogatif Perdana Menteri berhubung Dengan pelantikan hakim-hakim. Ahli-ahli Dewan perlulah memahami perbezaan antara proses pemilihan calon yang diperuntukkan dalam rang undang-undang ini dengan pelantikan hakim di bawah Perlembagaan Persekutuan.

Proses yang diperuntukkan di bawah rang undang-undang ini ialah proses yang mendahului proses pelantikan di bawah Perkara 122B – Perlembagaan Persekutuan. Ini tidak sekali-kali menyentuh atau menjejaskan proses pelantikan yang termaktub dalam Perlembagaan Persekutuan iaitu pelantikan yang dibuat oleh Yang di- Pertuan Agong atas nasihat Perdana Menteri selepas membuat rundingan sebagaimana yang dikehendaki di bawah Perkara 122B itu. Mengikut Perkara 122B(1), pelantikan semua hakim dibuat oleh Yang di-Pertuan Agong atas nasihat Perdana Menteri selepas berunding dengan Majlis Raja-raja.”.

[73] Aspiring candidates apply to the JAC for appointment as Judicial Commissioners. The JAC also reviews the performance of sitting Superior Court Judges and recommends them for elevation or promotion. These decisions have always been made by a majority vote through a secret ballot (if there is no consensus) and in all my time as a member of the JAC, I have not once interfered with the process. The candidate who gets recommended is therefore not the sole choice of the Chief Justice but either the choice of the majority or the collective decision of the JAC. In my opinion, this is a big improvement from what we did not have before.

[74] Any person who interferes with or attempts to interfere with the independent functions of the JAC commits an offence and shall on conviction be liable to a fine not exceeding RM100,000 (one hundred thousand ringgit), imprisonment for not more than two years, or to both.

[75] Candidates that are selected are forwarded to the Prime Minister to appoint in accordance with the provisions of the Constitution. The provisions of the JACA 2009 do however, allow the Prime Minister to not accept the candidates recommended by the JAC for appointments. In such cases, the Prime Minister can request for two more names of candidates.

[76] The mechanism of the JACA 2009 is far from perfect. As we can see from the Parliamentary debates, there are many issues raised against it. Even after its passing, many quarters, including the Bar Council have recommended changes to strengthen the Act. Foremost, concerns the

fact that the Prime Minister still has too much power in the appointment of Judges.<sup>16</sup>

[77] I do not wish to address the recommendations at this point. I am highlighting this to simply bring it back to the attention of the parties present here for possible improvements in the near future.

[78] That said, what is clear from the constitutional provisions on the appointment of Judges read with the supplementing procedure in the JACA 2009 is this – no person other than the JAC and the Prime Minister can recommend candidates for appointment to all posts in the Superior Courts.

[79] Any form of circumvention of these provisions could render those appointments either unconstitutional or in breach of written law. For this reason, no person, whether it be the President of the Malaysian Bar, any advocate or solicitor, any political party, the Attorney General or any other person for that matter has any business recommending names to the Prime Minister for appointment.

[80] For if this is done, not only has the Judiciary been trampled upon; its independence been transgressed and eroded; it is an attempt to interfere with the course of justice by influencing the operations of the Judiciary. And any name so considered on such improper advice runs the risk of being challenged via judicial review as being either unconstitutional

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<sup>16</sup> Bar Council Malaysia Kertas-Kertas Cadangan Reformasi Institusi dan Undang-Undang (Part C Judiciary/ Judicial Appointment Commission) available at <[https://www.malaysianbar.org.my/cms/upload\\_files/document/C.%20Judiciary%20and%20Judicial%20Appointments%20Commission%20-%20ILRC%20Submission.pdf](https://www.malaysianbar.org.my/cms/upload_files/document/C.%20Judiciary%20and%20Judicial%20Appointments%20Commission%20-%20ILRC%20Submission.pdf)>.

or in breach of the law. Any person so found to have done this also runs the risk of being charged with an offence.

[81] I have been an ardent and firm believer in the independence of the Judiciary including the appointment of its Judges. Hence, I have steadfastly observed all the principles espoused in the Constitution and the JACA 2009. If anyone has any reason to believe that we have not done this, then I would remind you that, as the law and procedure stand, the JAC again is only but one part of the appointments process and you should perhaps point the finger elsewhere.

[82] As I near the end of my tenure, it is my sincere hope that those responsible for the appointment of Judges remember their commitments to their oaths and duties under the Constitution and law, and continue to hold true to past comments or commitments that they may have made regarding the fair, independent and unadulterated appointment of Judges.

## **CONCLUSION**

[83] I will no longer continue to lead this institution in the coming months. As I leave, I hope that the appointment of the next Chief Justice is fully compliant with all aspects of the law bearing in mind the need to keep the Judiciary independent in view of the unfortunate and blemishing events of history.

[84] The law too has developed in a positive manner where fundamental rights and liberties are given their utmost interpretation and enforced to their maximum potential. The role of an independent Judiciary has been restored and the public are confident in us.

[85] All of us who are serving as Judges, practising at the Bar or even serving in public service will one day slow down to the point where we cannot carry out our current duties either due to law or by age. Let us retire gracefully and happily knowing full well that we left the institution far better than when we found it. We should gladly sit from afar and beam proudly at its growth rather than viewing it with concern that the judicial institution will turn into nothing but a mere shell of its former glory.

[86] To all my colleagues, judicial officers and support staff of the past and present on the bench, our success as an institution would have only remained as a mere wishful thought without all your dedication and support. For that, I am eternally grateful.

[87] I would also like to thank all members of the Executive Branch of the Government (past and present), and Parliament for working with the Judiciary to realise all policies especially so during the most challenging moments of our time during the pandemic.

[88] Just a little trivia – my tenure is the first time in the history of this Country where a Chief Justice's service has coincided with four different (4) Prime Ministers all from different political affiliations – in the order of Tun Mahathir Mohamad, Tan Sri Muhyiddin Yassin, Dato' Sri Ismail Sabri Yaakob and presently Dato Seri Anwar Ibrahim. During this time, judicial panels led by me have made what we firmly believed to be correct decisions on the law and facts regardless of the heated political overtones and undertones that clothed some of these cases. This alone should dispel any baseless notion that I have ever been partial to any particular Prime Minister or any political party.

[89] Ultimately, all my thanks and gratitude are owed to Allah SWT for as I have always said to those close to me, Allah has indeed eased my affairs. We can plan as much as we like to get our way but, in the end, plan as we may, Allah is the ultimate determiner of our fate.

[90] I have had the opportunity to work with truly inspirational and brilliant minds both at the international and local level. All the people that Allah has willed to put in my path have been really kind, helpful and stellar. I leave you and the Judiciary with no regrets.

[91] With that, I bid each and every one of you a warm and heartfelt farewell and a very happy 2025!