LECTURE BY

TUN TENGKU MAIMUN BINTI TUAN MAT,
FORMER CHIEF JUSTICE OF MALAYSIA
&
PROFESSOR IN PRACTICE
AND HOLDER OF THE ROYAL CHAIR ON
INTEGRITY AND GOOD GOVERNANCE,
FACULTY OF LAW
UNIVERSITI KEBANGSAAN MALAYSIA (UKM)

ON THE OCCASION OF THE

S.T. LEE LECTURE 2026

"*JUDICIAL INDEPENDENCE IN MODERN SOCIETY: THE MALAYSIAN EXPERIENCE*"

DELIVERED AT

THE AUSTRALIAN NATIONAL UNIVERSITY, CANBERRA

TUESDAY, 21 APRIL 2026

SALUTATIONS

Distinguished guests, members of the academia, ladies and gentlemen,

Assalamualaikum warahmatullahi wabarakaatuh and a very good evening.

INTRODUCTION

[1] I would like to extend my sincerest gratitude to the Australian National University (ANU), and specifically to Professor Helen Sullivan, Dean, ANU College of Asia and the Pacific and Dr. Ying Xin Show, the Director of the ANU Malaysia Institute, for the honour of inviting me to deliver the 2026 S.T. Lee Lecture.

[2] It is indeed a priviledge to receive an invitation from ANU, an institution so deeply dedicated to the highest levels of strategic and academic education. And it is a profound honour to stand before you, in a space that fosters the rigorous exchange of ideas, and to engage in a dialogue that is fundamental to the very existence of the democratic States we all serve.

[3] The halls of this university have long been a sanctuary for intellectual rigor and a beacon for the pursuit of truth within the Asia-Pacific region. For decades, ANU has stood at the forefront of Southeast Asian studies, providing the world with the critical insights necessary to understand the complex political and legal evolutions of our neighbours.

[4] ANU is not merely a place of learning, but a vital repository of the collective wisdom required to navigate the turbulent waters of modern governance. In an era where the noise of digital forums threatens to drown out the quiet deliberation of the courtroom, the existence of such a forum for deep reflection is paramount.

[5] I approach this lecture not merely as a former Chief Justice of Malaysia, but as a lifelong servant of the law who remains steadfastly committed to the preservation of the constitutional order. My retirement from the Bench does not signify a retirement from the principles I have

sworn to uphold; rather, it provides – as I would like to think of it: a unique vantage point from which I can reflect on the institutional health of our democracy.

[6] Having been freed from the immediate pressures of active adjudication, I am perhaps now better positioned to observe the broader currents that shape our legal landscape. In our increasingly complex global landscape, where the traditional boundaries of power are being constantly renegotiated — and often blurred — the role of the Judiciary as the final arbiter of justice is more critical than ever.

[7] We are living through a period of shifting paradigms, where the very definitions of authority and legitimacy are being challenged by rapid digital transformation, populist movements, and shifting geopolitical realignments.

[8] We see a world where institutional trust is a scarce commodity and where the Rule of Law is often viewed as a mere inconvenience by those seeking swift, rather than just, outcomes.

[9] It is against this backdrop of uncertainty that I wish to share the Malaysian experience — a journey marked by significant challenge, institutional resilience, and eventually, a profound and hopefully: lasting constitutional restoration. This narrative is not one of judicial triumph over other branches, but of a constitutional return to first principles, demonstrating how a nation can find its way back to its foundational pact after a long institutional winter.

[10] It is perhaps then apposite that the topic that is assigned to me today is: "*Judicial Independence in Modern Society: The Malaysian Experience*."

[11] To provide a clear roadmap for our discussion today, I have structured my lecture on the topic into four thematic pillars.

[12] First, I shall briefly examine the Malaysian historical context and the social contract, revisiting the consensual and peaceful origins of our supreme law, the written document that is the Federal Constitution, in 1957. We will explore how the Reid Commission's vision for a supreme law established the necessary guardrails for a multi-ethnic society.

[13] Second, we will confront the conflict, specifically the previous tensions created between two very powerful provisions of the Malaysian Federal Constitution being: one, the non-self-executing mandate of Article 4(1) and two, the 1988 amendment to Article 121(1). I hope to briefly analyse how a seemingly simple change in wording to Art 121(1) sought to redefine judicial power as a delegated privilege rather than an inherent right – effectively nearly eroding it.

[14] Third, and as a consequence of the second, we shall explore the so-called "judicial rebirth" in Malaysia, charting the landmark jurisprudence from 2017 onwards that restored our inherent authority and reaffirmed the doctrine of constitutional supremacy in Malaysia and the basic features of its Federal Constitution. In this analysis, we will consider the "trilogy of cases" that acted as the catalyst for this institutional spring.

[15] And finally, I will briefly address the modern and seemingly positively irreversible maturation of our constitutional discourse, observing how the Judiciary serves as the ultimate bulwark intended to insulate our foundational values from contemporary political shifts and the pressures of public opinion in an era where ‘instant justice’ is demanded but seldom delivered.

THE S.T. LEE LECTURE SERIES

[16] Before I delve into the substance of my speech, allow me to first note some of my observations regarding the ST Lee Lectures.

[17] The S.T. Lee Lecture series, established through the generous endowment of Dr. Seng Tee Lee, has long served as a vital bridge between scholars and practitioners in the Asia Pacific.

[18] It provides a rare and necessary space where the trends shaping our shared future can be scrutinized through a lens of both local context and universal principles. These trends allow us to move beyond mere legal technicalities and address the substantive human outcomes that the law is meant to achieve: justice, security, and the dignity of the individual.

[19] In a region as diverse as ours — home to a myriad of legal traditions ranging from common law to civil law and religious jurisprudence, and for a region that serves as the engine of global growth where the strength of our legal bridges is just as important as the strength of our trade routes – such platforms as this lecture are indispensable.

[20] Numerous eminent speakers from various respectable jurisdictions have shared their wisdom from this podium, and it is truly humbling to be included within such a distinguished class of persons. The legacy of Dr. Seng Tee Lee's vision is evident in the calibre of dialogue fostered here, which consistently elevates our regional understanding of the Rule of Law as a lived reality rather than a dormant theory.

[21] While I hold the Australian judiciary in the highest regard as a bastion of the common law tradition and a source of significant comparative inspiration — particularly in its robust approach to administrative law and the preservation of civil liberties — my focus today will be squarely on the Malaysian constitutional structure.

[22] This is the system with which I am most intimately familiar, having navigated its complexities as a judge. It is my hope, however, that by detailing the Malaysian experience, you may find parallels or points of divergence that resonate with your own legal framework.

[23] Comparative constitutionalism is a powerful tool; it allows us to hold up a mirror to our own systems and illuminate the universal struggles of maintaining judicial independence in a modern society. The challenges of upholding a written constitution in the face of political expediency are not unique to any one nation; they are part of the shared burden of all constitutional democracies.

INHERENT, NOT CONFERRED: THE SOCIAL CONTRACT AND THE HISTORICAL CONTEXT OF MALAYSIA AS REGARDS JUDICIAL POWER

Inherent, Not Conferred

[24] To speak of “judicial independence” is to speak of the very foundation upon which the Rule of Law is built. Without it, the “law” is nothing more than a tool in the hands of the powerful, used to subjugate rather than protect. It becomes a veneer of legitimacy over what is in reality an illegitimate or arbitrary exercise of power; a hollow shell that masks the decay of institutional integrity.

[25] In many modern political discourses, judicial independence is discussed as if it were a modern administrative convenience — a policy choice or a gift ‘conferred’ upon the courts by the legislature or the executive. I am here to suggest that this view is not only flawed but fundamentally dangerous.

[26] If we accept the premise that independence is a gift bestowed by the State, we must logically also accept the premise that it can be revoked, limited, or conditioned at the whim of the giver. A judiciary that exists at the pleasure of the legislature is not a judiciary at all; it is but another department of the government that can simply be “managed” if not shutdown entirely.

[27] In a constitutional supremacy system like Malaysia, judicial independence is not a privilege granted by the State, but a necessary consequence of judicial power being an inherent authority. It is the lifeblood that allows the separation of powers to function as it was intended, ensuring that the Judiciary remains a co-equal branch of government.

[28] If we then accept the premise that this 'inherent power' is not something judges have seized for themselves; we will understand that this is the natural and inevitable result of the constitutional architecture. In this sense, when the supreme law itself sets the limits of power, the branch that enforces those limits cannot be subordinate to the branches it is meant to monitor.

[29] The modern Malaysian experience is one of "rebirth" — a restoration of the Judiciary's inherent role as the ultimate defender of the Rule of Law, reclaiming the authority that was always intended by the framers of our Constitution when they formulated Article 4(1) in its original form and which form remains extant to date.

[30] When we move ourselves away from this flawed "conferred power" mindset toward the reality: that "constitutional power" is inherent and where judicial review is seen not as an intrusion, but as a fulfilment of the supreme law; we can then finally begin to appreciate the Malaysian constitutional scene historically, what went wrong, and how it was restored.

Historical Context

[31] Thus, in order to understand why judicial independence is inherent in Malaysia, one must return to the moment of our nation's birth in 1957.

[32] Unlike many written constitutions that were forged in the aftermath of violent revolutions, the Malaysian Federal Constitution was formed through peaceful deliberation, negotiation, and consensus. It is a

testament to the foresight of our founding fathers that they chose the path of dialogue over the path of destruction.

[33] Between 1948 and 1957, the political elites from the Malay and other multicultural parties, together with the Malay Rulers and the British colonial administration, successfully negotiated a written constitution for the Federation of Malaya. This negotiation was necessitated by the need to reconcile fundamental differences in the local population's demographics, the economic imbalance between communities, and the existence of nine separate monarchies – and how these factors would carve out our legal and political structure.

[34] It was a delicate balancing act, requiring immense compromise and a shared vision for a united future. The challenge was to forge a single nation with a dual civil and Islamic legal system in the context of and to accommodate our diverse communities, each with their own history, culture, and concerns.

[35] The result of these negotiations was a "social contract" that remains embedded in the very fabric of our Federal Constitution. This contract was not merely a political arrangement; it was a foundational pact that sought to balance competing interests — religious, cultural, and political — and established a framework where every citizen is protected under the umbrella of a single supreme law. It was designed to ensure that no single group or branch of government could override the basic rights of another, creating a "safe harbour" for diversity within a unified sovereign state

[36] The whole purpose of this social contract, was 'initially' to unify and bridge several notions that could potentially be at odds with one another.

On the one side, we had the rich and powerful ruling class such as the royals and the governed-class who now had a major say in local rule by virtue of our democracy.

[37] We then also had the competing interests of the various racial and religious groups that suffered some form of historical segregation or economic disparity. This raised questions of national identity, local language and religion and, education and many other fundamental aspects of nation building.

[38] Now, I say initially, because these were the initial concerns that were raised in 1957 upon the formation of Malaya in 1957. We later became what we were today in 1963 – when Singapore, Sabah and Sarawak joined Malaya and all became Malaysia. However, in 1965, Singapore and Malaysia parted ways leaving us only with Sabah and Sarawak.

[39] That said, the Federal Constitution, its original intent and institutional framework remained the same with additional guarantees and safeguards in respect of those two Bornean territories. The key notion of this framework was nothing less than the idea that every legal power must have its legal limit – the highest limit being the written Federal Constitution.

[40] In this regard, I am reminded of the celebrated judgment of His Royal Highness Sultan Azlan Shah in which he said these timeless words:[1]

[1] *Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd* [1979] 1 MLJ 135, at p. 148.

> "Every legal power must have legal limits, otherwise there is dictatorship. In particular, it is a stringent requirement that a discretion should be exercised for a proper purpose, and that it should not be exercised unreasonably. In other words, every discretion cannot be free from legal restraint…".

[41] In emphasising who should be primarily responsible for enforcing that limit, the learned Judge continued to observe thus:[2]

> "… where it [*referring to discretion*] is wrongly exercised, it becomes the duty of the courts to intervene. The courts are the only defence of the liberty of the subject against departmental aggression. In these days when government departments and public authorities have such great powers and influence, this is a most important safeguard for the ordinary citizen: so that the courts can see that these great powers and influence are exercised in accordance with law.".

[42] His Lordship used the words "these days" in the year 1978. Yet, the observation of "these days" and his words remain all the more compelling in this modern era – nearly half a century later. This judicial pronouncement also serves as a timeless reminder that in a democracy, power is not absolute; it is a trust held on behalf of the people, subject to the limits of the law. The Constitution enables the Rule of Law to serve as a defender between the government and the governed, prohibiting the exercise of arbitrary power.

---

[2] *Ibid*.

[43] Coming back to the concept of the social contract, it was formed to unify or bridge the various seemingly conflicting interest. In this regard, and in order to reconcile the fundamental differences described earlier, the Government of the United Kingdom and local leaders agreed to form a multinational commission to develop a written constitution for Malaya. This commission is popularly known as the Reid Commission.

[44] Premised on the recommendations of the Reid Commission, the Constitution enshrined several foundational stipulations which act as the pillars of our nation comprising a delicate tapestry of rights, duties, and compromises.

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

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

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

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

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

(v) The preservation of the nine pre-existing Sultanates who would continue to reign as Heads of States in their respective States and reconciled at the federal level by establishment of the position of Yang-Di Pertuan Agong ('YDPA') or King of Malaysia elected rotationally among the nine Sultans for a period of 5 years per term as the Head of State at the federal level;

(vi) Bahasa Melayu is the National Language;

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

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

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

[46] Given the time I have, the focus of this lecture is not so much the substance of these guarantees or fundamental ideas; rather the means by which they are upheld and enforced especially in a modern era.

[47] In this regard, for a social contract to be meaningful, there must be an impartial arbiter to enforce its terms. If the meaning of the contract can be changed at the whim of a simple legislative majority, then the contract

is illusory. A contract that can be amended by one party without the consent of the other is no contract at all; it is a decree.

[48] As such, the founding fathers intended role of the Malaysian Judiciary was explicitly embedded in the blueprint of our nation. The Reid Commission Report of 1957, was unequivocal about the necessity of an independent judiciary to interpret the Constitution and protect individual rights.

[49] The Commissioners stated clearly:[3]

> "… The guarantee afforded by the Constitution is the supremacy of the law and the power and duty of the Courts to enforce these rights and to annul any attempt to subvert any of them whether by legislative or administrative action or otherwise…".

[50] Without an independent judiciary empowered to check the other branches and ensure they remain within their "legal limits," the "social contract" becomes a mere "social suggestion," and the rights of the minority are left to the mercy of the majority of the day.

[51] The Judiciary's role, especially so in modern times, is to ensure that the rules of the game are respected by all players, especially those who hold the power of the State. We are the keepers of the consensus that made the nation possible. Without us, the fence that protects the individual from the aggression of the department is easily dismantled, and the very stability of the nation is placed at risk.

---

[3] Reid Commission Report 1957, at [161].

[52] In a modern society, judicial independence is the only mechanism that ensures the foundational pact remains insulated from the short-term pressures of political expediency and the shifting tides of populist sentiment.

THE EARLIER EROSION OF JUDICIAL POWER

[53] This brings us to the technical heart of the Malaysian struggle: the tension between Constitutional and Parliamentary supremacy. And this, in any case, brings me closer to what is the heart of this lecture: the mechanism by which the constitutional pillars that I referred to earlier, are protected.

[54] Article 4(1) of our Federal Constitution contains a powerful mandate and it reads:

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

[55] The crucial question here is thus: who declares such provisions void as surely, it cannot be the Federal Constitution itself. In simple words, and as will be argued in further detail later, it is the Judiciary. At this point, I can do no better than reproduce the extrajudicial words of our former Lord President Tun Suffian who said:[4]

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

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

[56] This provision places the Judiciary in a unique position where we are not merely interpreting statutes, but guarding the very boundaries of state power. It is the judicial duty to declare when a branch of government has stepped outside its constitutional fence. This mandate is not an invitation to judicial activism; it is a solemn obligation to ensure that the legislative and executive branches do not breach the supreme law.

[57] Despite this clear design, in 1988, our Constitution was amended to alter Article 121(1). This was a watershed moment that ushered in a period of institutional winter. The words "[t]he judicial power of the Federation shall be vested in two High Courts" were removed and replaced with a clause stating that courts shall have such jurisdiction "as may be conferred by or under federal law."

[58] For nearly thirty years, this amendment was used to argue that the Judiciary had been subordinated to Parliament — that judicial power was a gift to be given or withheld by the legislature. This "conferred power" fallacy suggested that the courts were mere creatures of statute, as if the entire third branch of government could be expanded or contracted by a

simple act of the legislature. In the case of *Kok Wah Kuan*, the majority of the Federal Court expressed a view that reflected the prevailing orthodoxy of that era, stating:[5]

> "[17] … The doctrine [of separation of powers] is not a provision of the Malaysian Constitution even though no doubt, it had influenced the framers of the Malaysian Constitution, just like democracy.".

[59] This view was, in my respectful opinion, a profound misunderstanding of our constitutional architecture. This fallacy led to a period of judicial self-restraint that many believed weakened the protection of fundamental liberties.

[60] As I noted in my dissenting judgment in a later case called *Zaidi Kanapiah*,[6] this pronouncement in *Kok Wah Kuan* reduced the role of a Judge to that of a mere administrator — a functionary who processes papers rather than a guardian who exercises judgment.

[61] When a statute compels a Judge or judicial officer to act in a certain way without the exercise of independent discretion — such as granting a remand for a fixed duration simply because the Executive asks for it — the Judge is deprived of the core of the judicial function. If the Judge has no choice but to say "yes," then the hearing is nothing but perfunctory.

---

[5] *Public Prosecutor v Kok Wah Kuan* [2008] 1 MLJ 1.
[6] *Zaidi bin Kanapiah v ASP Khairul Fairoz bin Rodzuan and other cases* [2021] 3 MLJ 759 (FC).

[62] This notion of being a “rubber-stamp” was a test of our national resilience, showing us the danger of allowing the Judiciary to become a servile agent of the legislature. Not until things changed recently.

THE REBIRTH: THE TRILOGY AND BEYOND

[63] The “rebirth” I refer to is characterized by a series of landmark decisions that corrected this historical course and reaffirmed the “basic structure” of our Federal Constitution. This was the moment the Judiciary remembered that it was not a child of the legislature, but a sibling.

[64] I cannot emphasise this enough that conceptually, the Judiciary is not superior to the other two branches and its exercise of powers, when called for, is not (as Tun Suffian suggested) an assertion of judicial power but merely an execution of a supreme constitutional mandate.

[65] In other words, when we reconsider Tun Suffian’s words in our modern context, it is not that judges strike down laws because they in of themselves superior but because they are bound to act by the higher authority that tells them to do so.

[66] And, the case for Malaysia is perhaps more compelling than most Commonwealth countries with a written Constitution such as India because we have the express Article 4(1) which does not merely say that judges are bound by the Federal Constitution but goes further to state any laws inconsistent with the Federal Constitution are void, to the extent of the inconsistency.

[67] And as I have remarked on many previous occasions without the Courts (an institution empowered by Article 121(1)) to enforce the Federal Constitution's supremacy in Article 4(1); the Federal Constitution would be rendered a toothless tiger, and its pages reduced to nothing more than a piece of beautiful calligraphy to hang on the wall and be admired. The judicial function is essential to maintain the checks and balances that prevent the abuse of power and ensure that the government operates within its constitutional boundaries on an institutional level.

[68] In that sense, you can appreciate why the *Kok Wah Kuan* view (and other cases decided along those lines) was so problematic. We have, since then though, had a rebirth in judicial power beginning with the trilogy of cases which are chronologically thus: *Semenyih Jaya*,[7] *Indira Gandhi*,[8] and *Alma Nudo*.[9]

[69] In the first case, *Semenyih Jaya*, the Federal Court decisively rejected the notion that the 1988 amendment had stripped the courts of their inherent authority and in so doing, marked our first step of departure from *Kok Wah Kuan*.

[70] The circumstances in *Semenyih Jaya* were, briefly, these. The Federal Court struck down a law that allowed non-judicial assessors to bind a High Court Judge in determining compensation for land acquisition.

---

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

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

[9] *Alma Nudo Atenza v PP & Another Appeals* [2019] 4 MLJ 1.

[71] The apex Court held that the power to adjudicate disputes and determine compensation is a judicial power that cannot be stripped away from the civil Courts or be given to non-judicial bodies. This ensures that the State cannot arbitrarily seize property without a fair hearing before an independent judge — a principle that is vital for economic security and public confidence. By reaffirming the exclusivity of judicial power, the Courts protect the rights of individuals against arbitrary State action and ensures that justice is administered by an independent and impartial judiciary.

[72] This decision was the first ray of light after a long institutional night, establishing that judicial power cannot be "conferred" or "taken away" by ordinary law because it exists by virtue of the Constitution itself. It only cemented the notion of 'inherent', and not 'conferred'.

[73] If *Kok Wah Kuan* was accepted as correct, which it cannot be, then the Courts would have retained that piece of legislation and continued being a rubberstamp by reason of Parliamentary decree. Again, so that the context is not lost, this would have derailed the clear protective mechanism in the Federal Constitution.

[74] Basically, Article 13(1) guarantees that no one shall be deprived of property save in accordance with law and that any such deprivation should be met with adequate compensation. 'Adequate compensation' is a triable question that is open to judicial determination. If the relevant law was allowed to restrict the judge's decision to whatever the lay assessors say the amount of compensation would be, there would be no point to having the judge sit there in the first place and the guarantee of Article 13(1) would have been an empty promise. As should be clear, this cannot be

true because under Article 4(1), the Federal Constitution is supreme (and not Parliament) so the law that put Article 13(1) in the backseat must yield to the Federal Constitution. Not the other way around.

[75] Beginning again from *Semenyih Jaya*, Courts, in reestablishing this balance, and giving effect to the supremacy of the Federal Constitution and its attendant guarantees of liberty, also re-established the authority of the judicial branch of Government and by necessary extension, the supremacy of the Federal Constitution.

[76] The other two cases namely: *Indira Gandhi* and *Alma Nudo*, were decided along the same lines as *Semenyih Jaya* which further cemented not only our departure from the unsustainable position established in *Kok Wah Kuan* but the upholding of correct constitutional principles and doctrine.

[77] In *Indira Gandhi*, the apex Court; the Federal Court, confirmed that the power of judicial review is a basic feature of the Constitution that cannot be removed by Parliament, ensuring that the civil courts retain the exclusive jurisdiction to review the legality of executive actions. I will have a little more to say about this 'basic features' point later.

[78] Before that, I must note, finally, in *Alma Nudo*, a nine-member bench unanimously struck down a provision of the Dangerous Drugs Act 1952 by which Parliament allowed the prosecution the use of a presumption upon a presumption to establish the ingredients of the offence of trafficking in dangerous drugs. By putting a constitutional stop to this, the Courts thereby reaffirmed that legislation must comply with the principle of proportionality and basic constitutional rights.

[79] Incidentally, to share a fact with you as regards our topic on the judiciary in the modern Malaysian experience, the Malaysian apex Court benches have always, and still usually do sit in quorums of three or five judges. *Alma Nudo* was one of the few cases in Malaysian history to have a nine-Judge panel and that too, unanimous.

[80] Back to my main point: collectively, these cases began the restoration of the Judiciary's rightful place as a co-equal branch of government, entrusted with the sacred duty of checking legislative and executive excesses to uphold the supreme law of the land.

[81] The effect of these cases, I argue, is in two important and implied ways. First, they departed from the regressive views held in *Kok Wah Kuan* that somehow the Federal Constitution does not expressly guarantee or require separation of powers. In all three cases in the trilogy, the Federal Court gave full effect to Article 4(1) as regards supremacy and to Article 121(1) as regards the judicial power of the Federation as an adjunct to the execution of constitutional supremacy.

[82] Second, and in a more modern context (in that it applies to more recent times), these cases, by departing from *Kok Wah Kuan*, in effect directly and indirectly started to impliedly accept the notion of 'basic features' in the Federal Constitution; which later in *Zaidi Kanapiah*, we started to properly label it the doctrine of constitutional supremacy.[10]

[10] *Zaidi Kanapiah*, supra at no. 6, at [94].

[83] This whole issue of basic structure/features is a lengthy discussion worthy of an entire lecture by itself, but to summarise the issue to the extent that it is relevant to our topic, I would say this.

[84] *Kok Wah Kuan* was deeply flawed not only because it held that separation of powers does not exist, but in effect, that if it did exist, it could be legislated away by Parliament. The doctrine of constitutional supremacy as it is now understood in more recent cases such as *Dhinesh Tanaphll*[11] and *Nivesh Nair*,[12] postulates that the Federal Constitution reigns supreme over Parliament and that while Parliament is empowered by Article 159(1) of the Constitution to amend the same, such amendments cannot by any means destroy or eradicate or fundamentally warp these basic features.

[85] Some have misunderstood this to mean that the Federal Constitution cannot be amended. This is wrong. It can and – in fact – has been on many past and recent occasions to make it better. Some examples include the 2001 amendment to expand the equality provision to include the previously unincluded express constitutional guarantee of non-discrimination on grounds of gender in any law.

[86] Or, even more recent constitutional amendments that prevent party-hopping in Parliament by expressly providing that party-hopping cannot be confused or conflated with the freedom of association; and the amendments that seem to have been formulated to improve equality

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

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

between fathers and mothers in the conferral of citizenship to their children.

[87] The fetter on constitutional amendments is not a mechanical fetter. Nor is it the imagination of a few deluded judges.

[88] This fetter clearly exists minimally in the provision of Article 159 requiring certain majorities or consents by certain bodies. These fetters are substantive and it is in this context that the doctrine of constitutional supremacy protects basic features of the Constitution. The point however is that the procedural fetter is not always enough because even if an amendment is procedurally valid, the legislature (being itself subordinate to the Federal Constitution) remains subordinate to the Constitution and thus, cannot substantively override its fundamental features.

[89] The practical display of this was what I alluded to earlier in the arguments against the 1988 – Article 121(1) amendment which was later resolved through a harmonious reading.

[90] To recap, upon *Kok Wah Kuan*, many argued that the 1988 amendment was unconstitutional because it effectively destroyed the Judiciary by subordinating it to Parliament and therefore eroding the supremacy of the Federal Constitution by preventing its executing body from effectively performing its functions.

[91] As such, the argument was repeatedly raised in constitutional adjudication as well as in academic discussions and fora that the 1988 amendment should be struck down for being unconstitutional. Had this argument been successful, the 1988 constitutional amendment would

have been the first ever nullification of an Act of Parliament that sought to amend the Federal Constitution.

[92] As dramatic as that sounds, I accept it is legally possible if not entirely necessary when the situation calls for it. However, in the case of the 1988 amendment, it was not necessary. This is because as the dissenting judgments attempted to explain in a case called *Maria Chin*,[13] that Article 121(1) (as amended) should be read harmoniously with Article 4(1) to preserve judicial power as it was.

[93] Read in that way, there was no subordination of the Judiciary to Parliament as such. In that sense, this whole debacle only arose from the overly broad way in which *Kok Wah Kuan* read the 1988 amendment and which reading was the actual culprit of the temporary curtailment of judicial power.

[94] As should be obvious as this point, this position was later and finally rectified in those later cases such as *Dhinesh Tanaphll*,[14] and *Nivesh Nair*[15] which emphatically decided that *Kok Wah Kuan* was wrongly decided. In addition, these cases further solidified the position of our constitutional law and theory that no one body is above the Federal Constitution in Malaysia – including Parliament.

[95] The case examples I have briefly provided to you should serve as an example of the principle of that part of our constitutional law in practice in more modern Malaysian experience. Nonetheless, please allow me to

---

[13] *Maria Chin Abdullah v Ketua Pengarah Imigresen & Anor* [2021] 2 CLJ 579 (FC).

[14] *Dhinesh Tanaphll*, supra at n. 11.

[15] *Nivesh Nair*, supra at n. 12.

share with you briefly more recent examples that reflect the maturation of the topic in recent times.

THE MATURATION OF CONSTITUTIONAL DISCOURSE AND JUDICIAL INDEPENDENCE AS THE PERENNIAL & ULTIMATE BULWARK AGAINST INJUSTICE

[96] When speaking of maturation, I must emphasise again that the subject I am covering today is necessarily heavy and context-based. To summarise it very succinctly, and in considering the degree of constitutional maturation in Malaysia, the issue of the development of high constitutional theory – specifically the basic structure doctrine in modern Malaysian experience – is in three parts.

[97] In the first part, and in earlier history, the doctrine of constitutional supremacy was, I would say 'rejected'. By this, I mean that earlier cases definitely recognised basic features of the Constitution but rejected the idea that constitutional amendments that erode these features could be struck down.[16] This first part, of course continues throughout history until *Kok Wah Kuan* where the ultimate decision is made that that these basic features (specifically in that case: judicial power) can positively be eroded to the point where judicial subordination to Parliament was held possible.

[98] The second part of our historical experience would be acceptance of the doctrine of constitutional supremacy and an active affirmation of the indelible nature of the Federal Constitution's basic features. And as I have explained, this positive growth began with the trilogy of cases. But, after

[16] See for instance: *Loh Kooi Choon v Government of Malaysia* [1977] 2 MLJ 187, at p. 188; and *Zaidi Kanapiah*, supra at n. 6, at [91]-[96].

that there was some turbulence in cases such as *Maria Chin* and *Zaidi Kanapiah* – as explained till final acceptance in *Dhinesh* and *Nivesh*. I have, for the purposes of this lecture, skipped the story behind that turbulence and addressed only the final result.

[99] The third part of the chronology then, and which relates to its maturation, is its application and acceptance. Insofar as the preservation and application of Article 4(1) is concerned, during my time as Chief Justice, there were numerous cases in which laws have been struck down for being inconsistent with the Federal Constitution. There was not one instance in which a constitutional amendment was struck down because, in my view, no particular case required it on their facts.

[100] Nearing the end of my tenure as Chief Justice and even now, the debate of whether or not the doctrine of constitutional supremacy – to the extent that constitutional amendments can be struck down – still remains live and a topic of discussion. But I have come to find that some of the aggression against it has died down in that the public and public figures appear more accepting of it.

[101] In this sense, this dialogue on constitutional supremacy is no longer confined to the specialized environment of a courtroom; we are witnessing a maturation of discourse in the public sphere.

[102] A striking example occurred just last month (March 2026), when the Malaysian Parliament debated the Constitution (Amendment) Bill 2026 (D.R. 4/2026) regarding the proposed term limits on Prime Ministers.

[103] While the Bill was ultimately defeated during its first reading in the Dewan Rakyat on 2 March 2026, for failing to secure the mandatory two-thirds majority, and leaving aside the political discussions as to why that might have happened, the constitutional debate surrounding it remains highly significant.

[104] It was perhaps for the first time that I truly saw active public and legislative acknowledgments as well as arguments predicated on the idea that a *constitutional amendment itself* could be unconstitutional. Critics argued that such an amendment might violate the basic structure of the Constitution or interfere with the discretionary powers of the Monarchy, while others argued that passing these amendments might improve, effectively, constitutionalism in Malaysia.[17]

[105] This shift in rhetoric moving from courtrooms to the legislature proves that the social contract is now guarded by a citizenry that is increasingly constitutionally-literate: even at the political level.

[106] It lends vital support to the doctrine of constitutional supremacy, moving it beyond what was once dismissed as a judicial invention into a recognized national standard. It shows that a robust and independent judiciary is the only means to ensure the foundational social contract remains insulated from contemporary political shifts. The people are beginning to understand that the Constitution is not a static manual for lawyers, but a living pact that defines the limits of all power.

[17] See: 'Misleading to claim term limit bill is against constitution, say NGOs' available at <https://www.freemalaysiatoday.com/category/nation/2026/02/28/misleading-to-claim-term-limit-bill-is-against-constitution-say-ngos>.

[107] That said, in today's modern world, judicial independence faces the new and subtle challenge of 'instant justice' on social media. Public trust is the very cornerstone of judicial legitimacy; without it, the Rule of Law weakens and the assurance of justice fades.

[108] In an age of viral outrage and curated information, the Judiciary must resist the urge to play to the gallery. I have always maintained that a judge remains loyal to only one cause: the oath of office to preserve, protect, and defend the Constitution.

[109] Independence means the courage to be unpopular. It means the fortitude to rule against the State — or against the perceived public will — when the law requires it. In my view, a judge who is swayed by the wind of public opinion is not an independent judge; they are a politician in a judge's robes. And a politician in a robe is a threat to the very liberty they are meant to protect.

[110] The role of Judges in Malaysia is to ensure, among many other things, that the foundational social contract of the nation remains insulated from contemporary political shifts. This relationship between the branches of government is not a contest for supremacy but a partnership in governance founded on a clear understanding of our respective constitutional roles.

[111] I would argue that in a modern context, the Malaysian Judiciary has moved to continuously uphold its role as the ultimate bulwark of the Rule of Law, demonstrating that constitutional supremacy is the only safeguard against the volatility of politics. We are the "social anchor" in a sea of shifting political tides, ensuring that the ship of state stays its course.

[112] Had we taken a vacillating attitude on the doctrine of constitutional supremacy and continued to swing like a pendulum – deciding one day it exists and the next day backtracking, I doubt we would have open calls that rely on that doctrine in discussions of high level of public accountability and constitutional stability. It is my fervent hope that the Malaysian Judiciary of today continues to remain firm and resolute.

CONCLUSION

[113] In conclusion, I observe that judicial independence is a fragile flame that must be constantly shielded from the winds of change. As I look back on my time on the Bench, I remain convinced that the security and prosperity of a nation are inextricably linked to the strength and integrity of its legal institutions.

[114] The Rule of Law is not merely a constraint on business or politics; it is the very foundation that makes sustainable society possible. It is the invisible thread that holds the tapestry of our nation together.

[115] To the younger generation here today: the Constitution belongs to you. Whether in Malaysia or Australia, it is your shield against the excesses of power. But remember, a shield is only effective if there is someone with the strength and the independence to hold it steady.

[116] We must continue to promote constitutional literacy across all segments of society, ensuring that the foundations of our democracy remain robust for generations to come. The Malaysian experience is not just a history lesson; it is a call to vigilance. It is a reminder that the price

of liberty is constant vigilance, and that the Judiciary is the guardian of that price.

[117] I hope that this lecture has helped you better understand your own constitution and to draw valuable lessons from our experience. With that, I once again thank the Australian National University for this opportunity to share the Malaysian journey and engage in this vital dialogue.

Thank you.