

LEGAL PRESS



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March - April 1990

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***E** specially for you...*

With special dedication to:

*Final Year Law Students
(1989/90)*

*may success await you
upon graduation...*



PRIMA : FACIE

The
'sage'
meditates....

**ASSALAMUALAIKUM
DEAR STUDENTS,**

Once again the 'Legal Press' is back to share its message with you. You may have realised that the previous issues have carried diversified issues which made food for thought. However the theme chosen for this issue is nonetheless versatile and we hope that it may equally provoke constructive response from the readers.

The theme 'Law and Politic' may sound parochial in the literal sense, but the embodying spirit of the message is certainly diverse. We have endeavoured, once again, to share our views and opinions on matters that prick great minds to seek beyond words with an astute critical outlook. Suffice it to say that, the socio-economic, socio-political and legal problems of our search for a better world cannot be achieved without putting the right-minded people in their proper places. Leadership and responsibility are co-extensive but the immediate compliment must be prudence and dedication.

Other columns are also intended to alert your minds about everyday issues which we often tend to overlook despite the potential to do us great harm if left unchecked. Highlight of past academics and extra curricular activities may also make interesting reading and should you be disposed to give any feedbacks, you are free to do so. It is our ardent desire to come up with the last and final issue of the 'Legal Press' before the forthcoming examinations. We hope that future publications may be enriched by your support and ideas which lie untapped in many of you. Do not hesitate to share, after all as Muslims, the greatest virtue in knowledge is to

share with others who want to know. Let therefore, those who know tell those who don't. It is a crusade against ignorance (Jahiliyyah) the worse enemy of every person. We wish you all a successful year.

Thank You. Wassalam.

CONSULTANT EDITOR.

CONSULTANT EDITOR

Lukman Sheriff

LUKMAN SHERIFF

LEGAL PRESS



*Law and Politic :
A Tumultuous Affair*

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RUMOUR

Note: This piece of literature might be offensive to those with no sense of humor. Humorless people out there are advised against reading this. If humorless people persist in reading this then the maxim *volenti non fit injuria* shall be applied in the writer's favour.

By
Tengku Eida Bustaman

The disease of the century is not far way from your dorm doorstep. At least six out of every ten students are afflicted and even more out of that number are carriers. All of us, yes ALL- meaning you and me and him and her, have the potential to suffer from the ailment. Before you start denouncing my statements as absolute hogwash and even bordering on libelous (group defamation, by the way, isn't actionable per se), see if you exhibit these symptoms:

1. Inability to retain more than \$3 by the end of the week.
2. Refusal to show bank balance to friends
3. Inability to eat anything that costs more than \$2
4. Refusal to go out with friends because of inability to retain more than \$3 by the end of the week. (You need the money to call home, or for the bus fare to nearest relative).

"A.I.D.S." In "U.I.A.!"

5. (Extreme affliction) susceptibility to begging.

Now, if you are one of those people who are featured in Bonia and Dunhill adverts, then don't worry, this piece of writing isn't for you. But area normal, average student of Law (who else would be reading my article?) who does not own a Swiss Bank account then listen: You could catch A.I.D.S in U.I.A. I'm serious. Acquired Income Deficiency Syndrome is a silent killer. And what's worse, very few are willing to help you get over it.

Before you squander all your loan money to oblivion, which is the ultimate fatality of A.I.D.S. be informed about The Disease. It displays about the same characteristics as that other Vile Virus, only that Non-oxynol-9 won't quite work in preventing its onset. It is contagious, oh yes, very much so. Miss A got it from the photocopying machine. She said, "At first, I thought I was being helpful, you know, xeroxing all these cases for my classmates,

but soon I found that my classmates aren't very helpful when it comes to paying..." You could also get it from the lavatory, so beware. The throne rooms in Central Market are particularly notorious, as it costs 20 cents to enter. But it does not take a definite physical object to disseminate the disease. One student contracted the Syndrome during the last Parkson Grand sale, no doubt through exposure to so much temptation.

And speaking of enticements, the same rule to social life does apply: It is better to be safe than sorry. We are not talking about those rubber sheaths here, (No, this is an Islamic University), but more about your choice of partners. Always make sure you know of his or her background, especially of the last surviving inamorta. Br. P, who overlooked this point, tells us this: "I didn't know that her ex was a stockbroker and that she was used to being treated to avocado and raw fish rolls for tea. I didn't know that to fish and to her a nice gesture means

wish now that I had checked her preferences..” And of course, having more than one partner would also increase your chances of contracting A.I.D.S, as a matter of fact, it would almost make it a sure thing, unless (a) you're a girl, in which case you'll be afflicted with gossips, which is about as bad as A.I.D.S, or (b) you're a guy and you expect the girl to pay, which won't happen. If the Disease seems to have a gender-bias to you then it merely means that the brothers have to be more careful about how they spend. Try to stay away from sisters if you want to avoid the mess altogether, because it is proven fact that A.I.D.S carriers (i.e those who are not afflicted, but who transfer the disease to others who come into contact with them) are mostly females.

The Disease does not preclude those who lead a pastoral life either. Sr. I. who never goes out with “those brothers”, found to her horror that she is also suffering from A.I.D.S. The cause- Mills & Boons. She has probably the largest collection of M & B paperbacks I have ever chanced upon, rivalling that Indian shop in Pasar Budaya. Her friend, Sr. Z, who is also a very good girl, might be another one on the long list of A.I.D.S victims, if she does not stop buying all those materials at the Pasar Malam.

Very little is known about the cure of A.I.D.S, although prolonged periods of hibernation, fasting and unadulterated studying have been found to alleviate the victim from the illness. Some obscure research have also concluded that suddenly acquiring a very rich husband or wife is also a good antidote, but they do admit that the occurrence of the phenomena is awfully rare. Borrowing from mates is not a wise curative measure as it provides only short term relief and would actually put the victim in a worse position

than before, especially when your mate decides to become a plaintiff. Borrowing from parents is instead recommended because parents normally forgive (and hopefully forget) bad loans. However, the best Cure is Prevention and I'm still not talking about those ugly rubber sheaths. (Seriously now) Careful planning of expenditure, and resisting the impulse to spend on unnecessary items would curb A.I.D.S. Having a pastime that is less pricey would also help, and think this is a particularly good reminder considering the Long Vacations are just around the corner. Instead of going shopping, perhaps its better to indulge in cheap sports like a game of Takraw or Badminton. And maybe making your own Baju Raya is better than sending it to your Tukang Jahit. And if you're a non-Malaysian and is staying over the hols, and you do foresee A.I.D.S coming on, impose on your local friends by staying with them!

What would I do to avoid A.I.D.S. this holidays? Well, suddenly acquiring a very rich husband would not be such a bad idea...

lp

◆ Legal Press
would like to express our heartiest congratulations to the Moots and Debate team headed by Azhari Ahmad for their recent success in the Bahasa Malaysia Moots Competition held in I.T.M. on the 6th of March 1990. ◆

The recent events in Panama made headlines worthwhile for political and legal analysis. It would be pertinent to note that U.S. policy in Latin America and the Caribbean remains very much a bullying big brother relationship. A historical appraisal of the past would better highlight the present situation to the readers of this column.

The United States Policy in Latin America began with the emergence of American Independence in 1776 and increased with time in the early 19th century. The famous Monroe Doctrine of 1823 was a declaration which purportedly gave support to any of the Spanish and Portuguese dominions fighting for their independence from their mother colonists in Europe. It was given legal sanction, which if violated by any continental power, would risk war without the United States. However, what would have served as a protection cloak in gunboat diplomacy became a tool of political oppression in the 20th Century. Suffice to note that the U.S. veto power in the United Nations and other allied bodies coupled with its military strength has often been put into improper use. The organisation of American States O.A.S. is nonetheless reduced to a propaganda forum for justifying U.S. military and economic dominance in this vast region of the south. The economic disequilibrium between North and South America has precipitated endless political and social unrest in the region. Thus the U.S. obligation towards its neighbours who are on the other side of the economic ladder is to do equity to maintain a harmonious whole.

The object poverty stricken countries of this region have found it necessary to use all means possible to survive economically and this has led to spontaneous outburst of leftist leaning revolutions and counter insurgency. The turning point in this relationships however came into the late 1950's

AFTER PANAMA

WHAT'S NEXT ?

● Many a Latin American state have little choice but to dance to the tune of America for fear of its military and economic prowess. ●


By:
Osman Jammeh

when the Castro led Jose Marti revolution swept the dictatorship of Fulgencio Batista in Cuba. This has remain all but one the Caribbean perhaps seconded by the Scanisnistas of Nicaragua. Whatever reasons may be given for direct U.S. intervention in these countries, a fundamentalist reason remain its economic and strategic position vis-a-vis the Warsaw Pact Alliance headed by Moscow.

The problem remains to be resolved in the face of on going war in El Salvador, Honduras, Nicaragua, and the civil unresting Columbia, Haiti and Peru to name a few. The turmoil requires a discipline and open handed diplomacy complimented by respect for the international conventions on the inviolability of state sovereignty. As students of law, one need not be reminded of the fact that territorial integrity the salient core of domestic and constitutional tranquility remains the basis of the modern state. Many Latin American State have little choice but to dance to the tune of American for fear its military and economic prowess. Little wonder for many as to why the United States decided to invade the tiny Eastern Caribbean Island of Grenada in 1983. A pretext for such an invasion was never fully digested but officialdom in Washington would put it that the people of Grenada wanted its presence to restore peace as does their Caribbean neighbours.

Panama became the latest victim such of gunboat diplomacy of the U.S. in this region. The invasion was certainly over dramatised and

calculated to justify its ramification. The Panamians however cannot express their opposition in any other form for it was a situation of either staying in the frying pan or to jump into the fatal firehouse. They choose the former in the face of military might which in Pentagon terminology is synonymous to right. Noriega must go so long as the Panama Canal Treaty obligations are no longer willingly loaded in favour of the United States, a new regime is certainly required to reverse this situation. At the end of the day U.S. interest must prevail and where threatened force and not diplomacy must restore the status quo in the formers far even if detrimental to that of the rest.

The situation echoes well with the recent statement of an Asean Statements, that the "United States should stop interfering with the internal affairs of other states. It has appointed itself the universal guardian of human right and expects all to follow its brand of democracy without necessary regard to our domestic political realities". One cannot help but concur with this statement because the subjective standards of the United States do not necessary compliment its contention of reasonable objectivity in her socioeconomic and political relationship with less powerful nations. This is nonetheless typical of the Soviet Union before Gorbachev. We must however watch and see what hour when right and not might should guide the conduct of all nations in international relationship irrespective of size and military strength. 

REVOLUTION in IRAN:

By:
Fakihah Azhari

The conventional definition of revolution spells it out as a total change in the form of government and structure of society. It is a departure from the old order and usually achieved through violent means.

The Muslim Concept:

The Quran is full of injunctions to the believers to struggle in the way of God. In the context, of course, the struggle (jihad) in question was against unbelievers. But it is not logical to suppose that such a struggle would be equally necessary later against those corrupt Muslims whom introduced into the Muslim community those very evils of arrogance, selfishness, injustices, etc, which the Quran had denounced in the pagan society of Prophet Mohammad's time.

The history of Islam, especially its first few centuries is full of movements that sought simultaneously to restore what they can as the true doctrine of Islam and to overthrow the existing political order.

By the beginning of the 20th century, the industrial powers of Christian Europe culture was established over the rest of the world; posing problems to the world of Islam by the technical, military and political ascendancy of the West. The collapse of the Ottoman Caliphate which was the last bastion of Muslim power indi-

cated a new era for the Muslim world. European powers took for granted the availability of Muslim lands as both theatre and prize of intra European rivalries.

Britain in the 19th century colonised India, Burma, M'sia, the Dutch of Indonesia, the Russian of the Caucasus and Turkestan.

In Africa, France seized Algeria in 1882 and Tunisia in 1881. Britain occupied Egypt in 1882. Algeria, Egypt, Tunisia, Sudan, Libya (countries which were parts of the Ottoman empire were wrenched away from Muslim rule and were put under Western dominance. Soon there was scarcely such thing left as a Muslim state not dominated by Christian West.

The 20th century saw the Muslim world struggling to free itself from Western political and economic domination; to redefine its own identity and to formulate its own response to Western ideas. In the process a great number of new Muslim states have come into being and the ones that survived have mostly been transformed almost beyond recognition.

Scenario In Iran

In the years following



It's Impact On Kufr Forces And Influence In The Muslim World

“
The Western media sought to portray the Iran - Iraq war as an age old tension rooted in nationalism (Shiite V Sunni)
”

the tragic 1967 war in which vast areas of Muslim lands paved into US-Israeli occupation, the burning of Al-Aqsa mosque in 1969, the humiliating defeat and dismemberment of Pakistan in 1971-81, it became clear that none of the existing nation states was capable

of defending the minimum interests of the ummah.

It was against this background that the Islamic movement in Iran gathered new phase and momentum. Iran was occupied by thousands of American technicians, military and civilians, who were usually paid much higher salaries than the Iranians working with them. The Shah was expending oil production to meet Western needs-letting the West take back its dollars in return for weapons or Western goods and services which Iran either did not need or could not absorb.

There was known co-operation between Savak

“ To divert global attention against the true spirit behind the Iranian revolution, the Western media branded the Iranians as fanatical Muslims who were using ‘terrorism’ as the means of struggle. ”

of Iran itself. As a result of this, the Western media sought to portray the Iran-Iraq war as an age-old tension rooted in nationalism (Shiite V Sunni). They were not willing to permit the proliferation of the Islamic revolution into other Muslim states. The Western powers, thus sought to suggest that the Islamic revolution in Iran had certain peculiar characteristics which did not permit an extension beyond the Iranian territory.

The Iran-Iraq war was in reality a major confrontation between Kufr and Muslim forces disguised as a power struggle for the control of Shatt-el-Arab. Iran lacking in artillery and economic strength, managed to withstand the Kufr onslaught and proved that Muslims, once united in a common goal, is a force to be reckoned with.

The Western powers anxiously waited for the Islamic revolution to fall apart especially after the death of Imam Khomeini. When the Western media predicted the fall of the Islamic revolution, it was based on the misconception that the strength of the revolution depended solely on an individual. They failed to understand the revolution as the dynamic struggle of the ummah to achieve a common goal. The presence of a leader merely

accelerated the movement.

To divert global attention against the true spirit behind the Iranian revolution, the Western media branded the Iranians as fanatical Muslims who were using ‘terrorism’ as the means of struggle. Hence, Muslims the world over became scapegoats of the Western media.

Influence In The Muslim World

Muslims in other states who felt the need for the revival of the Islamic State caught the revolutionary spirit of the Iranian revolution. In many instances, the Muslim communities are found to rebel against the secular systems. A recent example is the hostilities in Azerbaijan. The Russian media, declared it as a racial strife refusing to acknowledge that the Azeris demanded for a fully independent state of Azerbaijan. It was reported that a large number of Azeris had crossed the border into Iran seeking the support of their Iranian brethren.

The uprising of the Palestinians escalated

with the spirit of ‘Intifida’. The struggle of the Palestinian have entered a new era with the unification of the various factions within Muslim Palestinians. The PLO being a mere nationalist movement failed to give the strength and dignity needed to spur the Muslims against the Zionist power. The Muslims began to see their REAL goal and worked towards the establishment of an Islamic State, following the precedent set by their Iranian brethren. Thus the Intifida was in actual fact a result of the concept of true martyrdom and jihad fisa bilillah. The Iranian revolution has taught the Muslims the true meaning of Islamic jihad.

Conclusion

For an Islamic revolution to be successful, it must have the following characteristics:

1. The revolution must declare itself a part of the worldwide muslim ummah.

2. The revolution must reject the nation state and all its institutions.
3. The revolution must set out to establish an Islamic state of Islam's own conception.
4. The revolution must mobilize all sections of the ummah.
5. The revolution must defy the superpowers and their local agents. it must produce an Islamic worldview and finally, the revolution must produce a leadership which has no class or other selfish interests of its own.



Peguam yang kena tindakan disiplin jadi pensyarah UIA 30/8/89 (Rabu)

(utusan malaysia)

Saudara Pengarang:

SAYA adalah pelajar tahun pertama Universiti Islam Antarabangsa (UIA) dalam kuliah undang-undang. Saya memilih UIA kerana saya berpendapat ia dapat menjadikan saya bukan saja sebagai seorang peguam malah seorang peguam bilal.

Tetapi alangkah terkejutnya saya bila melihat bahawa salah seorang anggota akademik yang berpangkat Profesor Madya merupakan salah seorang bekas peguam yang telah diambil tindakan disiplin oleh Bar Council. *(back on the road)*

Bekas telah dikenakan tindakan disiplin atas sebab-sebab disiplin dan beliau sendiri tidak layak lagi menjadi peguam.

Saya rasa terkilan dan terputus kerana guru yang akan melatih saya menjadi peguam adalah seorang yang sudah terbukti tidak lagi diterima oleh profesion guaman. Hak kata pepatah "kalau guru kencing berdiri muridnya kencing berlari".

Apakah pihak UIA tidak sedar tentang hal ini? Apakah Kementerian Pendidikan juga tidak tahu tentang latar belakang orang seperti pensyarah ini tadi? — **YANG TAK MAHU KENCING BERLARI**, Selangor.

It's hard to say goodbye to something you hold dear to your heart.

By: Adi Radlan

Utusan Malaysia 30 August 1989

T

he mee goreng was fabulous-compliments to the chef. There is a computer perched on a table in the dining area, indicating the inclinations of the man himself : scholar, academician, someone with an unquenchable thirst for knowledge, especially in the field of Law and legal studies.

Our interview had adjourned from the living room to the dining table for a spot of tea and snacks. He talks with a philosophical edge to his voice, like a sage who has seen it all, who has been through it all.

"Greatness stems from enthusiasm", says Haji Salleh Buang, who claims that teaching is his vocation and which he holds dear.

"Contrary to what you might think, my teaching stint began long before 1985, the year I started lecturing in IIU."

The tone of conversation grows to be more sombre. **Based on your wide experience how do you feel about the standard of teaching in IIU?**

"Well, by gauging the feedback given by students I would think that some lecturers do have the knowledge, no doubt, but they have trouble in imparting them. It does not suffice merely to have the love for the profession, but you must also have the stamina to do research and to master the Law. There should be more two-way lecturing system where there are frequent questions and answer sessions between students and lecturers, mutually benefitting from the learning process. So teachers should always be willing and ready to be pointed out where they go wrong by students."

So you honestly believe that IIU should be more thorough in recruiting its teaching staff?

"Yes, definitely, I should think so. At the moment it is known for a fact that primary selection of applicants is in the hands of the senior members of the Kulliyah, but the final say is held by the powers-that-be, the high-ranking officials in the administration. But let's not dwell on the negative points of the university, for IIU has lots of positive factors too."

"For one thing the atmosphere in IIU really stimulates me in a pleasant way; ironically it all comes from the student body and not, as I would have hoped for, from the staff."

"I believe that the 1st year teaching staff should be the best, to form a solid foundation- to teach and to encourage research".

A YEARNING UNDEFINED

We adjourn to the dining area and are greeted by an array of magnificent astronomic delights. He motions us to our seats and the conversation continues.

"Democracy seems to be the hallmark of IIU in the sense that at the appropriate board meetings staffs are asked their preferred choice, yet from an objective assessment that particular person may not be the best equipped to deal with the subject of his choice".

"In addition, when there are so many favoured teaching staff who can determine their subject of preference it is the students who suffer in the long run by being deprived of lecturers who ought to be teaching that particular subject".

He then proceeds to lament on the lack of integration between the lecturers and their 2 spheres of Law- civil and syariah; otherwise it could be mutually enriching to both sides. Fortunately the students are better off in the sense that they imbibe knowledge from both sides.

We then tactfully enquired on his sudden and puzzling 'resignation' which raised several unanswered questions. It is common knowledge that the events leading to his 'purported' termination of service began with the publishing of the cynical article in a local newspaper.

"It is very sad that cliques exist in abundance in IIU, there is no unity of purpose among the staff, it is this sort of clanish behaviour that will demoralise IIU in the end".

Animosity and tension, we gather, permeate the air in IIU, a cruel irony of an scholarly Moslem community seeking an Islamic ideal.

"As for my purported termination, I would like to clarify that I did not resign, but was politely requested to do so, the reasons of which are still unknown to me. I'm still in the dark on all the matters leading to my dismissal in actual sense, but I deduce it to be the result of public complaint. I do know certain quarters were out to get me.... but I no longer bear a grudge".

"However I'm still officially an IIU staff till the end of March. I still frequent the campus to utilise the library even after everything that had happened. And I will continue to do so till some time when somebody tells me not to come, then I'll stop coming. It's hard to say goodbye to something you hold dear to your heart".

Have you ever endeavoured to clear your name, to justify your true situation?

"If they had asked me to, I would have done so".

It's not difficult to gather an inference from all these questions and answers that this is the typical case where the right of natural justice has been denied, ironically it is IIU that we are talking about here; so much for the teachings of Prophet Mohammad s.a.w and his companions. Obviously this failing of having common human decency to hear the other side puts IIU in a much sorer state in comparison with other non-Islamic inclined learning institutions.

So much for chasing an Islamic ideal.

So much for trying to find fault in others.

Start looking in the mirror. Who knows, maybe the fault actually lies within us.



Controversy

By:

Sharifah Zubaidah Aljunid

They say there are always 2 sides to a story. Not this story, though ... What the kafir press is telling us is that there is a civil war in Azerbaijan. True enough. Then, they tell us it began on January 13th when

talists', 'extremists', 'thugs', 'marauders', are used in reference to the Muslim Azeris (Azerbaijanis). The Armenians and even the Soviet troops are portrayed as righteous and helpless in the light of Muslim 'hostilities'.

Gorbachev blames the unrest on 'extremists' trying to undermine

Front which has purportedly led the revolt, however, is reported to have said otherwise:-

"We are NOT fighting for Islamic revolution. What we want for Azerbaijan is a democratic and SECULAR State."

This is of course, what Reuter reports. Reuter went as far as to quote a 'specialist' on oriental culture at the Soviet Academy of sciences, a Dr. Saleh Aliyev, who purportedly says that there are very few believers in Azerbaijan and that

AZERBAIJAN: Racial or Religious Strife?

the Azerbaijan Muslims started throwing out the Armenian Christians out of their own homes in Baku, the capital of Azerbaijan which is predominantly Muslim.

I would like to quote a paragraph from a well-known international magazine:

"Eyewitnesses told of Armenians being thrown from windows, burned alive, stabbed or beaten to death with iron-bars in the streets."

How is that for sensationalized ex-

aggeration? No surprise, as it comes from the Zionist-controlled media. Their only aim is to put Muslims in a bad light. That, they have done. Words like 'militants', 'fundamen-

his reform proposals. He alleges that some nationalist Azerbaijanis want to secede to form an Islamic state. Tofik Guseinova, a Moscow member of the Azerbaijani Popular

— "we are the most secularized of all the former Muslim people of the Soviet Union."

This is too much! The lengths that the Kafirs go through to pollute



the minds of the world are sometimes amusing. There used to be much more subtlety on such Zionist media propagandas but recently, a noticeably slackening flair in writing appears. Perhaps, we Muslims are beginning to identify and sift the crap that the Zionist media is feeding us. Then again, it might have resulted from fear and desperation on the part of the Zionist at seeing Islamic revivalism in most parts of the world. As Ayatollah Ali Khomeini (Iran's spiritual leader) puts it.

"... anyone who thinks the Soviet trouble are ethnic or nationalistic is making a big mistake. These sentiments are Islamic, and Soviet leaders should face the fact with realism."

NAGORNO - KARABAKH

Nagorno - Karabakh is an autonomous region situated in Azerbaijan but is inhabited mostly by Armenians. In February, 1988, more than 90 people died in clashes between Armenians and Azeris over the demands by the Armenian majority for Nagorno - Karabakh to be transferred to Armenia. Then followed a series of demonstrations until government put Nagorno-Karabakh under the direct rule of Moscow. However, strikes and demonstrations still continued. In Nov. 1989, thousands of Armenians denounced legislation returning control of Nagorno-Karabakh to Azerbaijan. A series of clashes broke out and the flares became bigger, leading to the present state of civil war.

CRACKDOWN

On January 20th, Soviet troops were sent to Baku to quell the conflicts. What resulted was the worst

violence to occur in Russia since World War II. 125 people died in clashes since Jan. 20 (TASS). The Azerbaijanis set up blockades to keep the troops out. Army tanks smashed through the barricades and the Soviet troops shot into the crowds. Within 24 hours, the Soviet Army took control of Baku. Sporadic fighting however, still occurred. Azerbaijan's Popular Front, nevertheless, still commands the majority support in Azerbaijan.

IRANIAN INFLUENCE?

Azeris are Shiite Muslims originating from the Turks who had lived within the Iranian political orbit in the middle ages.

A great majority of them, were poor peasants and were cut off from rapid development of the oil industry in Baku. The Armenian middle class in Azerbaijan, however, rose to prominence in the industrial environment of that era.

The Karabakh region had been populated by Armenians since the late 18th century. In 1923, when Azerbaijan came under Soviet power, the region became part of Azerbaijan. Hence, for 65 years, the Karabakh Armenians had lived in uneasy relations with the dominant Azeris.

There is no hard evidence that Iran is directly involved in the Azerbaijan conflicts. Reports have, however, shown that the Azeris have, since the revolt, torn down border posts with Iran, in order to have easier access to compatriot Azeris in Iran. Newspaper reports picture the Soviet Azeris marching in from Iran, carrying Qurans in their hands.

AZERBAIJAN: Racial or Religious Strife?

Iran remains mimed in the international scene on the issue of ethnic connections and support. As far as Iran is concerned, Soviet Muslims are suppressed and recent events in Azerbaijan are confirming this. Top Iranian leaders have advocated Islam as the only solution and NOT 'the Marxist sword'.

A WORTHY REVOLUTION?

Elements of a revolution are indeed prevalent especially in the secessionist movement of the Azeris. There was suppression, unrest and then, an open revolt.

The aim of any revolution is to CHANGE the prevailing system to that of a total opposite. If the Azerbaijani revolt is indeed a revolution, it should seek to provide an alternative to the existing communist system of government. Political analysts advocate 'western democracy' has secularism as one of its strongest pillars. Would communism and secularism be direct opposites? Both have a system of life devoid of the nation of God. Thus, 'western democracy' cannot be the answer. Islam, is of course, the only panacea.

What remains unanswered is whether the Azeris are revolting against the communists or merely the Armenian Christians who are threatening to take Nagorno Karabakh away from them. Perhaps, initially it was the latter which then lead to the former. It must ultimately lead to a revolt against communism. If not, then the violence and death tolls up to nothing in the context of Jihad fi-sabilillah.

'For Allah, He Is The All-Knowing'.



The DEVELOPMENT Of MAN

By : Dr. Husna Azahari
(Guest Writer)

Development: A Definition

In trying to define development we have several options available. Development has always had many connotations depending on the emphasis of the speaker. Is it physical, spiritual, moral, structural or intellectual? Is it the economics of production, growth in GHP? Is it the building of infrastructure such as roads, railways and mega-building?

At best it is defined as "a multi dimensional process of social change" and at its course "a process to modernise the developing countries and to raise them to the level of the advanced industrial nation". In this context development has become a process or a movement involving social change so that a community or nation-states may achieved economic growth, rapid industrialisation and dominian over the environment and man. Development can if carried to the extremes be a very good justification for war.

It is very interesting to note Ziauddin Sardar's definition of development¹ since his book is widely read "we would define development as a strategic compound of private and collective actions with their intended and unintended consequences, through which a society moves from one state of organisation, one system of ideas, beliefs and traditions and one stock of equipment to another in the context of other societies which have followed or are following a similar route with similar hopes, aspirations and fears".

On the other hand, I would like to quote Schumacher's² idea of 'development'. According to Schumacher, development must centre on the maximum utilisation and expansion of natural and precious

resources, which incidentally is man. So development is defined as the development of man or mankind. The tool of development is education. In this theory then, the primary role of education is to provide a means of producing good, moral people. The secondary role of education is to provide skills to already basically good, morally upright people.

Development: A Synthesis

In this article I will attempt to put a perspective on how Kufr defines development, how Islam defines development and how the university as the vanguard of knowledge interacts to educate and consequently to develop.

Development: A Redefinition

I have outlined the concept of development in the context of secular ideology. Let us get away from this context and try to elucidate what is development in Islam. The first step we must take is towards a redefinition and I will explain why this is important.

Intellectually the most effective way to pulverized our enemy is to define the enemy within our own dialectic so that issues are never seen within the dynamic polarity of

Look at this definition of terminologies. I heard on the news one day "puak pelampau Palestin di Tebing Barat hari ini telah dilaporkan melontar batu kepada beberapa orang tentera Israel" whose terminology are we using? who are this "puak pelampau"?

conflict that is unfolding.

In this technique the enemy defines us and we in turn use the enemy's definition on us. For example if Kufr defines God fearing practising Muslims as Muslim fundamentalists or Muslim extremists, we do not use this terminology. [Look at this definition of terminologies I heard on the news one day "puak pelampau Paletin di Tebing Barat hari ini telah dilaporkan melontar batu kepada beberapa orang tentera Israel..." whose terminology are we using? Who are this "puak pelampau"?

So in the first part of this article I went on an intellectual rampage, defining development in the context of our enemies - the Kufr. We have define development in 'their' context. We may put in a dash of ethics, a helping of religion, but we are still defined by the dialectic. Let us redefine ourselves.

The pure Deen of Islam came to build men and women of outstanding character and moral piety. It was this kind of men and men that Islam built to conquer lands, spread the message of Islam and will forever remain etched in the hearts of muslim. [Islam therefore did not come to build and perfect arches or bridges, jugs ceramics and Arabesque tiles. Islam too, did not come for the development production process. Islam came to build Iman].

Having said that I must qualify myself. I am not in the business of the dialectics of annihilation. Every-

thing to do with economic production is evil, Muslims must leave in abject poverty etc. Redefining ourselves is not merely to be in opposite to Kafir definition - but an assessment of ourselves within our own dialectics.

Education and University: The Tools of Development

We in the universities are in the business of educating people. We push the frontiers of knowledge, we are the guardians of information as well as provider of skills. In the early part of our article we did mention that the tool of development is education. Then perhaps we are directly responsible for setting in motion 'development'.

Let us look at the structure of our universities or universities worldwide. In a Kafir system one of its strongest bastion is the university. Why do I say this? Technology is not separable from ideology. The ideology of a particular society is the very foundation of its universities. We cannot, extract some non-ideology based data from its universities but separate ourselves from its immorality. The Kafir university supports Kafir world view both intellectually and physically. Therefore in Kafir dialectics, the academicians, the technocrats, the intellectuals are the priests and keepers of the Temple of the Kufr structure.

I had said earlier that we needed to redefine ourselves in our own dialectics. It is very difficult because we are so used to being defined by others. It is very revolutionary. Anything revolutionary invites controversy. We have redefine ourselves so that we may know ourselves and perhaps we may win but not to invite controversy.

Coming back to development, we have then define development in Islam as the development of man. We said Islam came to build men. This is very fundamental. We do not say that the men did not build bridges and perfect arches. In fact the Islamic man does all this and more, however we say that Islam's goal is

to develop the man. Islam's goal is to perfect man and his being through iman, ihsan and adab.

Development: A Treatise

We want to outline a model for the development of man. It is a simple model based on example. Our model may be followed by referring to our chart.

At the apex of our chart is the Creator, Al-Khalq. Allah gives knowledge or what is knowable through two means aqli (reason) and wahyu (reveal). Through 'ilm (knowledge) we know, we infer, we deduce. We can only know from what Allah decrees as knowable. Through knowledge we educate and through education we develop.

We educate a man for his moral excellence, for some fields of specialisation and also to subordinate his interest to those of his society. And in our chart we have all these three elements. We have called them al-uluhiyyah, al-insaniyyah (humanity) and al-teknologiyyah (technology). We have again divided each element into smaller elements:-

- (i) al-uluhiyyah. Several other aspects are encompassed here such as adabiyah (manners), akhlaqiyyah and mustamaiyyah (social obligation conscience).
- (ii) al-insaniyyah (humanity). The aspects making up al-insaniyyah are the same as in (i) but those obtained through aqli only.
- (iii) al-teknologiyyah (technology). The skills obtained through aqli.

It is against the grid of this chart that we can make examples of how possible combinations can be produced. The possible combinations are:

1. K.T.A.S.

A man with technological skills and moral conscience but without the knowledge of wahyu could be a man with a social

conscience but still an agnostic or an unbeliever.

2. K.A.S.

A man with a moral and social conscience without technological skills, without the knowledge of wahyu. Still he would be an unbeliever.

3. K.T.S.

A man who is very well versed and highly skilled in technology but a man devoid of moral and social conscience. A worse possible example.

We have then two other possible combinations K.B.I.R. and K.T.B.I.R. In these two groups of people we have the ideals of which path we should follow in our pattern of human development. In the first group, is a man with moral and social conscience, a man who aspires to be near to Allah, a man with adab, akhlaq and musytama'i. We have examples in Uthman and Fodi and Imam Khomeini.

In the second group, we have a man with ihsan, adab and iman but also well equipped with technological skills. We have examples in Ibn Sinna and Mustafa Chamran.

Development: A Conclusion

In this article I have attempted to dispose of not merely definitions but the whole dialectics of Kufr definition - of defining ourselves. From that premise I have define what development means to a muslim and it can ally near the development of his self. How he achieved that self development is only by example from the model of the Islamic man, the Ibadurrahman. By putting forward this article I have answered some questions but have raised many more. Alhamdulillah that would have pleased me greatly.



Reference

1. E.F. Schumacher, *Small is Beautiful*, Abacus 1974.
2. Zianuddin Sardar, *Science, Technology and Development in the Muslim World*, 1977.

Vijandran

v

Karpal Singh : The Defamation Suit



Nobody would want to be Mr. Vijandran. You spark the suspicions of an Opposition MP like Mr. Karpal Singh and there goes your reputation.... your whole life in fact.

The furore has died down. Many questions, however, remain unanswered. Why did the A.G. order the destruction of the 11 videotapes and 4 envelopes containing photos and negatives, the essential evidence to prove the allegations? Why did Mr. Vijandran "consent" to it if he were innocent? Were copies made of the evidence before the destruction? Can the A.G. be charged under S.201 of the Penal Code for causing the disappearance of evidence of an offence committed, to "screen" the offender?

The Prime Minister feels that the issue was over-exploited so much that those allegedly involved were being "prosecuted" even before the matter was brought to court. Imagine.....Mr. Karpal Singh has the power to bring a person down just by making an adverse public statement! Can the law provide adequate remedies for Mr. Vijandran if he is innocent? If he is guilty, can he be convicted or had the executive ensured that he won't?

The only legal remedy open to Mr. Vijandran seems to be to give a defamation suit. This, he has done. He claimed in the suit filed sometime in January that Mr. Karpal had at a Press Conference in December 16, 1989, accused him of being responsible for the death of a young girl who got involved in obscene videotapes.

Mr. Vijandran is smart. Being a lawyer, himself, he knows that he would have slim chances of succeeding if he were to sue Mr. Karpal Singh for the statement Mr. Karpal made in Parliament, and later outside, accusing him of involvement in the tape scandal. Mr. Karpal could plead privilege, absolute or qualified, which could be defeated by evidence of "malice" but malice is not easy to prove.

Mr. Vijandran is also suing the "Tamil Osai" newspaper and its managing editor for republishing Mr. Karpal's statement. He is claiming damages for slander and or libel against Mr. Karpal Singh: damages for libel against all of the defendants and an injunction to restrain future publishing of the words or any similar defamatory words.

THE LEGAL ENVIRONMENT

There are basically, two types of defamation, namely, libel (which is in permanent form) and slander (by spoken words or gestures). Libel is actionable per se whilst to prove slander, the plaintiff must show "special damage".

Mr. Vijandran is suing Mr. Karpal Singh, inter-alia, for slander. Exclusion from society does not constitute special damage. In this case, however, Mr. Vijandran need not prove special damage as section 5 of the Defamation Act 1957 provides that it shall not necessary to prove special damage where the words were calculated to disparage the plaintiff in his office or profession. Mr. Vijandran must therefore prove that the words had been calculated to disparage him in his office as Deputy Speaker of the Dewan Rakyat or the MIC Secretary-General or as a lawyer by profession.

The essentials of defamation are, firstly, the words must be defamatory, secondly, it must refer to the plaintiff and lastly, the words must be published.

DEFAMATORY WORDS

The test was laid down by Lord Atkin in *SIM V STRETCH* (1936): "whether the words were calculated to expose him to hatred, ridicule or contempt in the mind of a responsible man and would tend to lower the plaintiff in the estimation of right-thinking members of society generally." The exact meaning of the words in Tamil Osai, translated by Supreme Court interpreter into English was: "Obscene tapes Matter: A young girl Committed Suicide ? News released by Karpal".

What is defamatory must depend on the circumstances of the case and the climate of public thinking at that time. In English case of *LEWIS V DAIRY TELEGRAPH* (1964)AC, for example, the House of Lords held that a news item stating that the officers of the London Fraud Squad were investigating the affairs of the plaintiff company did not make an ordinary sensible man think that where there is police inquiry, there is guilt. Could Tamil Osai use the same reasoning to defeat Mr. Vijandran's claim? i.e. that the words "obscene tapes matter" would not make a reasonable man automatically imply Mr. Vjandran had anything to do with it.

It is submitted that the reasoning cannot stand as in the circumstances of this case, the public had already associated Mr. Vijandran to the porn-tape scandal, thanks to the wide media coverage on the issue. Thus, the climate of public-thinking was geared towards that assumption. The words, could hence, be said to be defamatory.

REFERENCE TO THE PLAINTIFF

Mr. Vijandran need only to show that at least one person reasonably believed that the statement referred to him. The reference may be deduced from all revelant cir-

cumstances. This aspect could be proved without much difficulty in Vijandran's case.

PUBLICATION

Lord Esher, M.R. defines publication in *PULLMAN v. HILL* (1891) 1 QB524 as:

"The making known of the defamatory matter after it has been written to some person other than the person it was written".

In this case, there was evident publication, both in the Press Conference and in the news item in "Tamil Osai".

DEFENCES

Has the defendants any defences? "Tamil Osai" may offer to make amends under section 7 of the Defamation Act but they must prove that the defamation was unintentional. If they cannot fulfil the criteria for this as stated in section 7 (5), they may try to mitigate damages under section 10 of the Act, if they had inserted a full apology for the said libel in their newspaper just before the action commenced.

What about Mr. Karpal? There are three defences open to him: Privilege, Justification and Fair-Comment.

The first is not provided for in the Defamation Act but exists at common-law. Could Mr. Karpal plead "qualified privilege" that the statement was made in the performance of a duty? Mr. Karpal may say, it is a moral duty upon him to expose the wrong-doings of a public figure. What is moral? Is it moral to subject a man to persecution by the public before even being proven guilty?

Under the defence of justification, Mr. Karpal must prove that his allegations were true. The burden

to discharge may be quite heavy.

Perhaps, the best defence for Mr. Karpal would be "Fair-Comment", a wide and flexible defence. Being the "brilliant" lawyer that he is, Mr. Karpal may succeed in proving the four elements to establish the plea of "fair-comment":-

- a) The words complained of are COMMENT.
- b) The comment is on a matter of public interest
- c) The comment was based on facts.
- d) The comment is one which a fair-minded person can honestly make on the facts proved.

Whatever the outcome of the case, the truth is Mr. Vijandran may not ever regain the reputation he had before the alleged scandal. He has presently "taken leave" from the Dewan Rakyat to settle his problems. The opposition has asked for the removal of Mr. Vijandran from his parliamentary post. The Dewan Rakyat has the power to do this by passing a resolution to that effect under Article 57 (2A) of the Federal Constitution.

Allowing this will definitely put the Government of Malaysia into bad light as the act itself would tantamount to convicting a man not proven guilty for the alleged offence committed.

(Written by *Sharifah Zubaidah Aljunid*)



Nury: Project "K-21"

"Our brain is designed for success. It is not designed for failure...." These words were repeated often enough to leave a significant impact in our minds. The Nury "K-21" project, or its introduction rather, was given in the Moot Court to 70 selected law students of IIU on the 6th of February, 1990 from 8.30 to 11.30 p.m.

It was most intriguing to learn about the process of learning itself. The two representatives from the Nury Institute were among the founders themselves, Dr. Norlaili and 'Uncle M'; both of which were very likeable. They managed to bring the participants into almost informative experience, as they gave a general elucidation on the workings of the human brain, nutrition for the brain and effective learning methods.

'Respect for the brain' is the main basis for Nury's principles. Nury institute carries out research on how the brain works and the latest findings is that the human brain can store up to 10 and 10.5 million kms of zeros after that if typed on a regular type writer. We have thus underestimated the potentialities of our brains.

Exams should be thus viewed as a celebration according to 'Uncle M'.

Once you have acquired the correct study techniques you will actually cut down your study hours from 8 to 3 hours a day. The rest could be used for welfare work or extra-curricular activities.

Stress is bad for the brain. Thus it is of utmost importance to cut down stress. The food that we eat will assist much in this area. Cut down on caffeine, nicotine, sugar and refined carbohydrates. Those who love Maggie Mee, beware! Monosodium glutamate can kill grass; just imagine what it can do to the human body! Our dietary intake of food will not give sufficient vitamins needed for the body. Thus supplement your diet with vitamins. For the brains, especially for retention of memory, take B complex with vitamin A, vitamin C and Lecithin.

'Mneumonics' is a method of learning which teaches us to depart from linear notes and to create study aids in the form of graphics and link-words. The best method for long term memory is to formulate a story out of the facts we learn.

We learned a lot of interesting things that night and according to Uncle M, that was only 5% of what Nury could teach us. Nury has plans to follow up with future programmes in order to gauge our progress and we are definitely looking forward to it.

A big thanks to the Welfare Secretariat of the Law Society!

Apologies To Asad

We extend our apologies to the Academic and Student Affairs Division of IIU for our mistake in the last issue in saying that there was a 'previous counselling unit which proved to be a failure'. In actual fact there had not been a counselling unit before.

Legal Cliche

- Women lawyers make the best motions.
- The man who said 'talk is cheap' never hired a lawyer.
- It takes a lot of fits to make a lawyer well dressed
- Only lawyers can write documents containing 2000 or more words and call it a brief
- If you can't take a lawyer who knows the law, take a lawyer who knows the judge

Contributed by:

Hisam Sallehuddin
who 'legally stole' it from the
library of S'pore sub- courts

Editor- only law undergrads knows
how to validate an illegitimate act.

Legal Press wishes
all Law students the
best of luck in the
coming exams. Since
Ramadhan is just
around the corner,
we would also like to
extend our 'Aidil Fitri'
wishes. Have a nice
holiday and hope to
see you all in one
piece after the long
vacation.

THROUGH *the* BARRICADES

*Knock! Knock!
"Is anybody there?"
A reply there is none
But the silence that beckons the greeting
Speaks more in the echoes
Upon the wall Upon the Barricades!*

*'Tis a queer thing - the wall,
For it protects the occupant
And yet turns upon
To torment by sheer isolation*

*'Tis a cruel thing - the Barricades,
For it keeps at bay approachers,
Disregarding the Heart's intent,
And cuts, hurting in places
Never hurt before*

*Yet stand they still
Against tide and time,
Against season's change
But as a sign that yet
Another soul has lost!*

*"Show me a path,
A path trimmed with Roses
And I'll show you the Thorns,
The Thorns behind them!"
answer a bruised and broken voice - finally!
A voice from within the wall,
A voice that once led the cries of Battle.*

*"Yet despair not," said I, "if chance would have - "
"In happiness Sorrow,
In company Loneliness,
In love Hatred,
In trust Betrayed!"
For is not life without its twists and turns*

Not life?

*If there is but a shimmer of light remaining,
If there is but an ounce of energy left,
Then must we still summon upon such to make it
Through the wall Through the Barricades!*

by: SAIFUL LIZAN

Should We Apply English Common Law: Part II

By:
Suhaili Mohd. Yusof

It may be argued that even before enacting the Act, the courts had already filled the lacunae with the English Common Law. The absence of the Act was not an obstacle for the courts to apply the English Common Law. It was illustrated in the case of *KANDASAMY V SUPPIAH* (1919) 1 FMSLR 381 where Innes C.J. held "I find the Magistrate in error in not looking beyond the written law in force in these states. There are certain branches of jurisprudence with which the written law in force in the states either does not deal at all or in dealing with them does not do so exhaustively. I mention by way of illustration of law of wills, of trusts, of torts and of succession. In some instances, the practice of this court and of the legal profession has filled those blanks and has brought into life what in a British Court is described as 'Common Law'".

Although it is true that Malaysian laws are relatively not complete and consists of loopholes in some branches of law, we should not take that as a blanket approval for the application of English Common Law principles without having regard to the proviso of section 3 of Civil Law Act 1956. Professor Ahmad Ibrahim gives his opinion that if it can be

argued that the essence of the Civil Law Act was not an obstacle to fill the lacunae in the law, then there should be no reason why these lacunae could not be filled even if the Act is repealed or amended. The repeal or amendment would cease the monopoly of English Common Law in the development of the Malaysian Common Law and to allow the Malaysian judges to refer to other legal systems. This is especially for the judges to take judicial notice and reference can be made to the religious value and local custom and values of many races in Malaysia and to local circumstances. It is submitted that the judge must look into local circumstances and customs before filling the lacunae into the law and from that basis develops our own Common Law without having regard to the English values.

Professor R. H. Hickling in his book 'Malaysian Law' writes that the reliance of English Common Law is an obstacle to the usage of bahasa Malaysia in the courts.

"In fact, the language of Malaysian Law has been English for less than a hundred years. If a Malaysian jurisprudence is to develop, then the national language — a medium from which the nation itself draws life — must effectively be adopted. In certain cases, such as Kedah, Perlis, Kelantan and Ter-

engganu, some proceedings in the High Court are already conducted entirely in the National Language, and this tendency will inevitably continue. Yet the obstacles of the English Common Law remains formidable, as long and ever increasing rows of English Law reports confirm. While the speedy retrieval of case law is now possible with computerisation and can only be resolved by a confrontation between English and Malaysian Common Law, and a change in the structure of the legal profession itself — a profession still dominated by English trained barristers."

It may be argued also that the English Common Law is an obstacle to the development of Islamic Law in Malaysia. The legal practitioners have intentionally forgotten that the *lex loci* of Malay states were Malay customary Law and Islamic Law, though it has been judicially and historically proven. The *locus classicus* for this was *RAMAH v. LATON* and was accepted in the case of *FATIMAH v. HJ. ISMAIL*, and *TG. MARIAM v. PESURUHJAYA HAL EHWAL TERENGGANU*. It is, may be, because of their devotion to English Law and its principles just like knowledge of and sometimes their prejudice against Islamic Law, English judges and some English trained

" In fact, the language of Malaysia Law has been English for less than a hundred years. If Malaysian jurisprudence is to develop, then the the National language- a medium from which the

nation itself draws life- must effectively be adopted"

dice against Islamic Law, English judges and some English trained judges tended to ignore and avoid the Islamic Law. For example, in the Singapore case of *IN REM MARIA HERTOGH*, the Court of Appeal applied the English principles of domicile to render a Muslim marriage, valid under Islamic Law, null and void. On the other hand, in *MARTIN v UMI KALSOM*, the English principles of domicile were applied to make a marriage clearly invalid under Islamic Law valid. With the introduction of Civil Law Act 1956 which does in effect English Law be replaced the Islamic Law as the basic law and Islamic Law was relegated to a subsidiary and subordinate status.

Whilst it is true to say that the legal profession in Malaysia is still dominated by the English trained professionals, it is hope that the increasing number of locally trained lawyers should make a great impact in the development of Malaysian Common Law. The lawyers, when presenting a case, should cite and argue on Malaysian Law, make a research on the local values and customs before applying the English principles of law. As a result the judge would not be deprived of the assistance of the local law. The problem of relying on English Common Law can be traced as far as in 1923 in the judgement of Reay C.J. in the case of *LEONARD V NACHIAPPA CHETTY* (1923) 4 FMSLR 365. He said

" Counsel for the plaintiff relied chiefly on English Law. Counsel for defendant not only argued entirely on English Law but stated that he did not know what the local procedure was. This placed me in a difficult position.....Before reliance could be placed on English decisions, particularly decisions and procedure, it is necessary in the first instance to examine carefully our local

law and to ascertain what it is and in what respect it resembles or differs from English Law. This seems a self evident proposition but it is nevertheless too, often overlooked by the counsels"

A self evident proposition mentioned by his Lordship is still overlooked by the counsels. In *GOVERNMENT OF MALAYSIA V LIM KIT SIANG* [1988] 2 MLJ 41, The C.J. of Malaya has drawn attention to the role of our courts when applying law of England in that we should not apply the law of England slavishly and blindly without comparing the basis of our jurisdiction. The over reliance on English Law should be eradicated especially by the local trained lawyers who have an advantage of studying Malaysian Law.

As was suggested accepted by all that we must have our own Malaysian Common Law, it is therefore submitted that section 3 and 5 of Civil Law Act 1956 should be repealed or amended. Professor R.H. Hickling in his book makes a reference to the position in Thailand when the Commercial Civil Code has provided that

- a) where no provision of the Code is applicable, local custom shall apply, and
- b) where there is no such custom, the case shall be decided by analogy to the provision of the Code most nearly applicable, and
- c) if there is no such provision, the Code shall be decided by 'the general principles of law'

Professor Ahmad Ibrahim suggested that section 3 of the Act may be amended to the effect that " unless the provision has been enacted or will be enacted by the written law in Malaysia, the courts shall and must apply the Common Law of Malaysia which was followed and

administered by the courts in Malaysia with reference be made to religious values and customs of the parties concerned"

To conclude it is worth to note the perspicacity statement which has a laudible principle, made by the Prime Minister of Malaysia Dato' Seri Dr. Mahathir. This is when he was asked by foreign journalists during the conference before the CHOGM meeting. He says

" The question about the Common Law is that it is common to whom? If it is common to the British people, it is not necessarily common to the Malaysian people. We have our own value system and culture. We should form our own Common Law. To cite a case in Britain, maybe 20 years or 100 years ago, and on that basis make a decision in a Malaysian court on current case, I think it is not quite right because there is a change with time, there is a change with location. It is for that reason we do not want to tie ourselves to what is known as British Common Law because we are not British. We are Malaysian and we have our own way of thinking, value system and way of deciding how things should be settled".

Unless and until the legislation is repealed or amended and the attitude of legal practitioners is changed, all the discussions concerning this topic will just attract academic discussions.

■ Suhaili Mohd. Yusof ■



Campaign TOWARDS A BETTER ISLAMIC ENVIRONMENT

“

'Return' here
means not to
recite the Quran
and Sunnah
with excellent
tajwid; but to
actually turn
their pages and
to read and
understand
what is written

”

The Campaign Towards
The Creation Of A Better
Islamic Environment In IIU-
A Personal Comment

The campaign is more or less 3
weeks old. What? You don't know

what campaign I'm talking about? It
doesn't ring a bell at all? Well, allow
me to rephrase my sentence... The
Campaign Towards The Creation
of a Better Islamic environment in
IIU is about 3 weeks old.

The target of the campaign
should be obvious that is towards
the creation of a better Islamic
environment. Oh my! Does that
imply that we have an Islamic envi-
ronment in IIU; and all that we need
do is to spruce it up a little; and
correct any minor imperfections with
a few twitches here and there. It's
like fixing a slanting picture on
one's wall isn't it?

By the way, what is an Islamic
environment? I prefer to define an
Islamic environment in IIU accord-
ing to the present era : that is the
last decade of the 1990s before we
venture into the year 2000. Instead
of defining it in itself I'm more in-
clined to define it in relation to the
students of IIU (we are after all
talking about the Islamic environ-
ment in IIU, aren't we ?)

Our Islamic environment should
encourage the students to return to
the teachings of the Quran and
Sunnah. 'Return' here means not to
recite the Quran and Sunnah with
excellent tajwid; but to actually turn
their pages and to read and under-
stand what is written. Only through

reading and understanding will we
be able to understand what the Is-
lamic principles are and apply them
in our lives. I think that many IIU
students rely too much on hearsay-
that is, another person's interpreta-
tion of the Quran and Sunnah. It's
about time that our Islamic environ-
ment should be one in which we
know what the Islamic principles
are ourselves.

Only when we are aware as to
what they are, can we learn to apply
them. Mere theory without applica-
tion renders knowledge useless. For
instance the theories of an Islamic
Banking System may be at our fin-
ger tips but how do we apply them
when we start working in our pres-
ent society? In other words, our
Islamic environment, should be one
which makes us aware of our Is-
lamic principles and values and yet
at the same time allowing us to be
sensitive to the evolutions in our
society. My suggestion is a three
pronged approach:

- i) Inculcate the concept of
tawheed and belief in the here-
after as well as our responsibili-
ties as the khalifah of Allah.
- ii) Acquire the Islamic knowledge
in all aspects of our life; politi-
cal, moral, social and academic.
- iii) Be sensitive to the evolutions
taking place outside of the IIU
campus and being able to apply
our Islamic principles in such
an environment. Only then can
Islam be restored to the highest
position it once held so dearly
during the golden era of Islam.

I cannot help but to quote a fel-
low student who said, " Many stu-
dents are obsessed with the idea of
an Islamic State that they forget the
path that leads to it-an Islamic
Environment".

Oops...sorry! I think I had better get back to our campaign at hand. I had been perusing through the objectives of this campaign. They are as follows:

i) To move the IIU community towards the creation of a better Islamic Environment in IIU.

ii) To enhance the acts of enjoining rights and forbidding evil among the IIU community.

iii) To contribute towards the realisation of the objectives and philosophies of the university.

They sound pretty good, don't they? I thought so myself and was really expecting that the issues that would be tackled would be just as interesting and mind endearing. Unfortunately I was in for some disappointment.

The first issue is geared towards cultivating and nourishing motivation among students to work towards achieving academic excellence vis-a-vis productivity. I feel that this issue is baseless because students do want to achieve academic excellence. The problem lies not in the "under motivated" students but the academic system of IIU. We have too many credit hours so much so that students spend their spare time studying or preparing for assignments. As a result they are unable to attend the many seminars or talks organised by IIU's societies. A lucid example is the recent Law Week, where the attendance rate was pitiful for most of the activities organised. To camouflage the dearth of students; the venue was often changed to the Moot Court so that the speakers would not lose heart at such a small turnout. Perhaps a little more flexibility in the academic system could do the trick! Academic excellence here does not

mean burying one's head in one's book nor scoring high C.G.P.A.s. A student with academic excellence is one who is able to amalgamate knowledge acquired through books with that derived from truly experienced persons. Perhaps the issue that ought to be tackled is not the motivation of students but the academic system.

The second issue is the utilisation of the institution of the masjid as the mechanism of education, unity, ukkhuwah and rahmah. This is a great step towards building a new image of our dormant mosques. Perhaps we can for a start stop regarding it as some architectural heritage but rather as an institution of learning as it once was during the golden era of Islam. If we take the mosque to mean an Islamic university, this goes to show that in our neatly packed campus we have two institutions of learning! Unfortunately our dear mosque is flooded beyond its actual capacity during privileged occasions such as during Friday Jumaah prayers.

As for the third issue it deals with the giving of salam among the members of all strata of the IIU community towards better solidarity. To add more "oomph!", posters have been pinned up on almost every door of the university's offices and classrooms. It reads "Give salam wherever you go and whenever you can". I must say that it does add some colour to the rather listless doors; what with the bright red print against the pure white background. However, that is as far as it goes. Posters being what they are cannot give any impetus towards the creation of a better Islamic Environment.

Furthermore, these two issues are trivial. This is because if we understand the teachings of the Quran

and Sunnah we would naturally give due respect to the mosque and make the giving of salam a part and parcel of our lives. To put it bluntly, by placing emphasis upon a matter of prime importance like the understanding of the Quran and Sunnah, these trivial matters would naturally fall in their proper places.

The fourth issue deals with compliance with the Islamic dress code by all members of IIU's community. Oh no! The dress code again? Just when I thought that it was gone for good. To quote a fellow student, he said, "...the dress code, what is wrong with it? I think it's O.K." Thank God! One reasonable person at last who shares my sentiments. If I hear anything about the dress code again, I think that my eardrums will burst...urg.urg, URG!

Dear readers, I'm fine now. I just went into a sudden fit of agitation that's all. Well! Where was I? Oh Yes! To be rather frank I find the Penal Code far more interesting than the dress code. It's not that I'm against the Quranic requirements for the covering of one's aurah but it's all these nonsense as to how it should be done that irritates me. By the way, this issue also falls into my basket of trivialities. I think it's high time that we concentrated more on how we ought to behave and act like Muslims rather than how we look. After all the most important veil is the veil behind one's eyes. What we should strive to eradicate is all the backbiting and the scandal-mongering. It brings to mind a recent incident when a student of IIU wrote a letter to the Press expressing his or her grievance as to a particular lecturer who, in his or her mind had fallen from grace and as such was not qualified to be a

Continue page 24

PROCEDURE AND THE USAGE OF BAHASA MALAYSIA IN THE COURTS

•It was meant
to train and
expose
the final year law
students to Bahasa
Malaysia •

On the 2nd of February 1990, the Law Society organised the seminar, "Kursus Penggunaan Bahasa Malaysia Dan Prosedur di Mahkamah", which was totally conducted in Bahasa Malaysia. The seminar, which was held in the Moot Court had the limited participation of the final year students only.

This was the second time the seminar was organised and it was meant to train and expose the final year law students to Bahasa Malaysia, as the language would be essential after they graduate. Furthermore its objective was also to give the support of the university towards the endeavours of the incumbent Lord President, Yang Arif Tun Abdul Hamid Omar in promulgating the use of Bahasa in court.

The Judicial Commissioner of the High Court, Yang Arif Tuan Faiza Thamby Chik did the honours of officiating the seminar. Together with him during the opening ceremony was the Dean of the Kulliyah of Laws, Tan Sri Prof. Ahmad Ibrahim, Mr. Mohd. Nur Manuty the Dean of Students' Affairs and Mr. Wan Adnan Wan Mohammed, the Assistant Registrar of the High Court of Kuala Lumpur.

In the evening, a talk was given by Mr. Wan Adnan explaining the history of Bahasa in courts and the ways of implementing its usage at present. The response was good especially during the question and answers session when many students participated. Certificates were

presented to the participants at the end of the session.

It would have been better if the seminar could have been conducted in two days as it was originally planned. Still the final year students displayed a great amount of enthusiasm and perhaps the Law Society would organise many such events in the future.



From page 23

lecturer at the IIU. This certainly has nothing to do with what this person had to wear! I only wonder to what heights this epidemic has reached.

The fifth and sixth issues dwell upon the promotion of tolerance and the observation of adab-ul-ikhtilaf among students and also the upgrading of cleanliness of the IIU compound and premises. - Whew! Finally, something more practical. If only this issue could override that of the silly dresscode. By the way, I wonder if you readers have come across any insecticide or perfume to rid our tutorial rooms of mosquitoes and their pungent smell?

The final issue is to pose to students reasoned opinions regarding music in Islam based on the nusus. Music according to the nusus is fine but that does not mean that we should shut ourselves from contemporary music. I am in no way trying to advocate raggae, heavy metal or whatsoever. I just feel that

we should be sensitive to the evolutions taking place outside of our campus and this also includes changes in the music world.

The campaign was geared with such a guts and with such colourful objectives. However, I feel that we must be true to ourselves in admitting that the campaign hasn't left any impact upon us. To many, it is just another campaign with attractive posters. Perhaps the fault lies in placing emphasis on trivial issues and promoting them in less effective ways. I can't help but recall a comment by a fellow student. He said that he felt the spirit of ukhuwah when he attended a three-day camping trip at Senangin. He found that although he hardly knew his members, they were able to strike up such a rapport in the spirit of Islamic brotherhood. That was something he couldn't experience within the IIU campus.

I think what he said rings truth. Talking of an Islamic Environment can be very tedious. Even more so with the countless talks, seminars and lectures. Perhaps in our goal towards the creation of an Islamic environment we could organise more programs for the students to "create" an Islamic environment. Enough talk. Let's ACT. - Now! Remember, actions do speak louder than words.



ADVENTURES OF THE All Inquiring REPORTER



HAVE YOU EVER WONDERED WHAT EXACTLY THE OUTSIDE WORLD THINKS OF THE LAW, AND ALL ELSE CONNECTED WITH IT? WELL, FOR THIS ISSUE THE ALL INQUIRING REPORTER BRINGS YOU...

TO THE REASONABLE MAN DOWN THE STREET!

OUR REASONABLE MAN IS IN HIS MID-TWENTIES AND IS WORKING IN THE OIL & GAS INDUSTRY. WE ASKED HIM HOW HE PERCEIVES THE LAW



YOU SHOULDN'T BE ASKING ME REALLY, I NEVER GOT TANGLED WITH THE LAW. I'M A GOOD BOY. WHY DON'T YOU ASK THE POLICE?

JALAN SEHALA

THE STREET



WELL, LAW TO ME IS
① A SUMMONS FOR SPEEDING
② THE THING THAT GETS CRIMINALS INTO TROUBLE IF THEY ARE CAUGHT

..... ③ MICHAEL KUZAK AND GRACE VAN OWEN, ALTHOUGH I DON'T THINK LAWYERS IN MALAYSIA ARE LIKE THAT... I MEAN HOW GLAMOROUS CAN 'GOVINDASAMY & KASUPILLAY, ADVOCATES & SOLICITORS' GET?

SAMAN!

WE WERE SLIGHTLY SURPRISED BUT THOUGHT THAT SUCH A RESPONSE SHOULD HAVE BEEN ANTICIPATED... ANYWAY, WE WERE INTERESTED IN HIS COMMENTS ABOUT LAWYERS, SO WE PROBED FURTHER...



HMM.. NO GLAMOUR EH? SO WHAT ARE LAWYERS HERE LIKE THEN?

THEY'RE SUPPOSED TO BE MAKING LOTS OF MONEY BUT EH, I DON'T KNOW WHERE IT COMES FROM. I ONLY KNOW OF THREE LAWYERS... CHE' MAN CHE' MUD, LORRAINE ESME OSMAN, AND THE FAMOUS KARPAL SINGH.



TWO ARE ALREADY IN JAIL, SO I THINK THE THIRD ONE SHOULD BE IN THERE, TOO.

RADICAL. WE THANKED HIM FOR HIS VIEWS AND TOLD HIM THAT HE WAS ON THE STREETS... AND NOT IN PARLIAMENT!

THIS IS

VIEWPOINT

At the stroke of 12-midnight amidst a slight drizzle, Malaysians from all walks of life participated in the colourful celebrations for welcoming in the new year-1990. The atmosphere was damp, yet the night was alive with music and dance, a sumptuous feast for one's sense of sight and sound. The ushering in of the New Year was made all the more significant with the simultaneous launching of Visit Malaysia Year 1990 (VMY for short).

The VMY 1990 is a major project first, spearheaded by Datuk Sabaruddin Chik (The Minister for Trade, Tourism and Industry), with Co-operation from the Tourist Development Corporation (T.D.C.). Furthermore VMY's very own mascot would be our 'orang utan' which goes by the name of Wira. The main aim of VMY 1990 would be to promote Malaysia as a tourist's destiny, and thus boost the potential of the local tourism industry in becoming a major source of revenue.

Perhaps the year 1990 was the appropriate moment for the launching of this project; what with the eventful year of 1989 which has now taken its place in the annals of history, but remains fresh in our memories. The unforgettable events of that year which made most Malaysians proud were the successful organisation of CHOGM and the spectacular achievements of Malaysia at the Sea Games. CHOGM threw Malaysia into the limelight; and the prowess of the organising committee in hosting an International Event was acknowledged. I assume that many Malaysians were brimming with pride as they rode high on the waves of euphoria. (It's amazing what international acknowledgment does to our country's morale!)

Owing to these forms of exposure and the efforts taken by TDC in

VISIT MALAYSIA YEAR 1990

Are We Being Hypocritical?

By : Ummu Kolsome

promoting Malaysia overseas, 1990 was the chosen moment. Almost a month has lapsed since the launching of VMY 1990. The real poser is whether the VMY project has achieved its objectives?

I must confess that my personal assessment of VMY is based solely on information derived from the newspapers. The NST has reserved a special column for latests news on VMY 1990. Personally, I get the impression that there are so many tourists in Malaysia that we are

to read of Malaysians offering to house foreigner tourists. It brings to mind a little incident that happened not so long ago. I entered a shop in order to purchase a few items. The saleslady appeared to be busy, and was further agitated by my requests and put on the most sourish looking face, which caused her to age instantly. I waited for her to finish whatever she was doing. Suddenly, into the shop came a tall and gangly looking young man with blond hair and blue eyes. He was donned in a

“
Many Malaysians are more than willing to be hospitable and friendly to foreign tourists than to their fellow Malaysian. Isn't it about time that we rebuild those bonds of hospitality and feelings of care and concern for our fellow Malaysians first?
”

having problems accommodating them. The hotels in tourists spots are booked. As a result resident Malaysians have offered to take in foreigners to house them, maybe feed them and possibly show them around.

I'm not aghast at the lack of accommodation because it's an inevitable occurrence. As such those who are sceptical of the VMY 1990 project should not use this as a bone of contention in proving that the VMY 1990 was badly planned and should have been done piecemeal. This is because I staunchly believe that to achieve something one has to begin somewhere and not wait for the missing pieces to come miraculously together.

However, I was rather surprised

pair of scanty looking shorts and singlet. Almost like Cinderella who was transformed by her fairy god-mother into a beautiful princess, the sourish look on her face disappeared. In its place was a pleasant face and sweet smile and she left her work immediately to attend to this man, and in her best English said, 'May I help you?' Finding that he didn't require anything the saleslady returned to what she had been doing and the sourish face replanted itself. Even Bruce Banner alias the Hulk would be amazed by the natural metamorphosis the lady went through.

In my rather long winded way, I feel that many Malaysians are more than willing to be hospitable and friendly to Foreign tourists than to

Seminar On The Legal Profession- A Perusal

(held on the 24th and 25th of February, 1990)

This was a well worth seminar especially designed and carefully structured for the knowledgeable enhancement of our 'lawyers' to be final year students. It was officiated by none other than the Lord President himself, Y.A.A. Tun Dato' Abd. Hamid Omar, who also presented a paper on 'Malaysian Common-Law-

Myth or Reality?'. The Lord President's speech among other things, concluded that the Malaysian Common Law was not a myth but a near reality.

Other talks in this two days seminar included a forum on the 'Decline of Lawyers' Ethics-Towards a solution'; 'The Art of Negotiation-Settlement Out Of Court'; 'The Art of Cross Examination' and 'Bahasa

Malaysia In Courts'-Challenges Ahead'.

Ideas presented in the seminar were thought provoking; the files were sufficiently filled, and the refreshments were satisfactory. It is interesting to note though, that some of those who thought they proved a point, most shamefully elucidated their immaturity.



their fellow Malaysian. Isn't it about time that we rebuild those bonds of hospitality and feelings of care and concern for our fellow Malaysians first? Let us be true to ourselves. When you see a fellow Malaysian struggling with a heavy piece of luggage do you stop to give that person a helping hand? What if you happen to see a pregnant woman in a crowded S.J. bus, would you willingly give up your seat for her?

There are many persons who go without food and shelter in Malaysia. Why is it that we willingly go to the aid of a foreigner than a fellow Malaysian in dire need. I'm in no way trying to cast a dark shadow on the efforts of those who feel that they are contributing to the VMY project. I just felt that sometimes our priorities are so muddled up that we forget what truly requires our attention.



Several cultural shows were organised to introduce the tourists to our rich cultural heritages which in made up of the traditions of the three major ethnic groups in Malaysia: Malays, Chinese and Indians. These cultural shows tend to strike at my conscience and I feel that the present generation of Malaysian are losing touch or failing to appreciate their own cultural heritage. We have adopted so much from the west; their clothing and music. As a result tourists may find it difficult associating the rich cultural heritage with its people.

Malaysians, I feel should be educated and learn more about their

VISIT MALAYSIA YEAR 1990

Are We Being Hypocritical ?

cultural heritage which I feel is a priceless gem in any given society. How many of us know of our 'kuda kepang', other than it being a traditional dance? As a result I feel that we are being hypocritical by boasting of our cultural heritage which we know so little of and much less appreciate.

I feel that the VMY is a project to be applauded. It would enable us to open up areas of employment in the trade and tourism industry. Hopefully the unemployment rate would then be decreased. However, need we be hypocritical in achieving our monetary target?





By:
Lukman Sheriff

Of Prosperity and Survival

The tidal wave that swept through the world leaving trails of tremor, fear and uncertainty on one hand and hope and optimism in the other, is a much welcome wave. The debilitation of communism and the emergence of a European Common Market could only lead to no other conclusion that the ice of the cold war has thawed; no longer will the world be ruled by 'might and power' but by the potent force of economy.

Though it might be a far-fetched conclusion, certainly, with the escalating common notion that peace is magnanimously better than a 'war-torn world' and man's awareness which reach to an almost an unprecedented level on environmental issues, the battle between prosperity and environment increasingly becoming intensified. For in one hand, to attain a better standard of living, to be a forefront figure, is certainly is a rule of the world. Everyone wants to increase their lots, improve their stature, be it material or spiritual—we all want to improve. On the other hand, the very notion of survival lies, though no doubt in the hand of God, intrinsically in the well being of the Motherland. For the obliteration of a sound eco-system, no doubt

will create chaotic and unpredictable weather and atmosphere which consequently affect to the last point of life.

This is where the world is entrapped. The developed nations, the West, are far ahead than the developing countries be it in term of technological advancement or survival. Definitely they do not have to frown upon improving their lots from an indigent situation. No doubt they have to improve, but improve they do from their already affluent and advanced state. On the extreme end, the developing nations struggle feverishly to improve their living from a destitute and impoverished one. While they are developing, of course, every available means would have to be utilised, every single potential be exploited and every single opportunity be seized. They have a Hobson's choice of either to survive or exploit their natural resources and the latter logically adopted. While in the West, in the past, in the name of progress they have developed without even an inkling to the side effect of their production. Their progress was accompanied by unseemingly deleterious and unamendable effects especially the emitting of CFC. Yet conversely and equitably, the West blame the developing countries for polluting the environment.

This injustice is what Malaysia has been clamouring about. Malaysia has been accused of 'raping' the earth in timber logging and neglecting the environmental stand-off in developing the country. Indeed, if such criticism is without any implication why should we even heed to the 'absurd' accusation. But no, with it entails possible economic sanctions which will bitterly cause hardship to us. In the U.S., the so-called 'environmentalists' are pushing a bill to the Congress that economic repercussion be the solution if their 'creed' is not adhered to. Blatantly, this is unfair. Why should a developing nation be retrogressed and not able to exploit their natural resources while the west, which contributes to more than half of the causes of pollution, be scott-free from blame and able to advance further? Indeed, the scale of justice is no more in balance.

With this in mind, Malaysia has persistently put forth the view that environmental issues are global responsibility. Each country should try to alleviate the environmental deterioration of another country by providing alternatives to the economic fields which adversely affect the environment. They could have provided aids of financial support, but they do not. Instead, accusing and blaming the other that seems prevalent. As a Muslim, as a Malaysian there is much to be done. Though there was a sigh of relief in the Langkawi declaration, it must be borne out that Britain, Australia and Canada are the only developed countries involved. What about the rest? The U.S. in particular. We need to show our stand. Surely, we cannot afford to sit on our laurel any more.

A RELUCTANT AU REVOIR to MY BLISSFUL UTOPIA

By:

Adi Radlan

"Remember when the days were long,
And rolled beneath the deep blue sky;
Didn't have a care in the world,
With mommy and daddy standing by."

I received a startling news yesterday: the old man down the road in my kampung had died, burnt to death. You see, his hobby in the evenings would be to gather up all garbage that piled up by the side of his house and then set it alight, like a bonfire more or less. I never really knew him, for he is a cantankerous and temperamental kinda guy, very reserved and, in a sense, aloof.

To tell you the truth I was actually scared stiff of the guy, especially in my childhood because he had this gruff voice and probably because, to me, he didn't seem to like kids that much either. Normally when you hear that someone you are faintly acquainted with dies, you rarely shed a tear because you were never really familiar with him or her. But in this instance I feel the tinge of utter sadness and it reverberates intensely in the hallowed walls of my heart.

For you see, to me, his death in a sense violently snatched away a

vital piece of my childhood memories, though not necessarily the most vital. Picture of my childhood years like a completed jigsaw puzzle, and someone steals a piece, it all becomes incomplete, wanting and unfulfilled. So that's how I felt. And the fact that he was burnt to death because the flames from his 'bonfire' became out of control, overwhelming the dry grass all around him; it all adds in escalating the sadness and melancholy I feel for the tragedy. He ought to have known better that to stoke a large fire in the middle of a drought.

But then I guess the Lord giveth, and the Lord taketh away, eh?!

"But happily-ever-after fails, And we've been poisoned by those fairytales".

The old man's death is the only second biggest threat to my 'once eternal' childhood memories. The first time the Lord came a-calling was when my granma passed away, more than 13 years ago.

Alice has her Wonderland; so did I. Only mine doesn't last forever. How I wish I had a magic wand to make everything remain the way it once did. How I envy Alice who had her magic portion and the Wizard of

Oz by her side, able to make her every wish comes true. Alas Alice had that power; I have that weakness. Reality doesn't serve you well now, does it?!

I guess what I'm trying to say is that there are certain things of which we are mere mortals have no control of, and no matter how great our desire to maintain it, it is best that we let go. It is but that we let go.

"Who knows how long this will last, Now we've come so far, so fast, But somewhere back there in the dust, That same small town in each of us".

Ironic, isn't it, that in our days of gloom and despair and devastation do we cast a glance skyward to ask for help from the Almighty. God seems to come into focus only when we start to feel our lives slowly crumbling away, bit by bit, and we are at our wit's end trying to contain this personal catastrophe.

Whenever I let myself be drawn into this thought of how my childhood 'wonderland' is slowly evaporating before my eyes and I remain powerless to control the flow of events, I start to feel really down—that's when I start thinking of God and pray that He grant me the strength to survive. Beginning with my great-grandfather, my grandfather, my grandmother, my mom and dad— if the common rules of logic prevail they would all die in that sequence. I know death is morbid thing and people are reluctant to discuss it, but it is a certainty in life, and people ignore it out of fear, or indifference.

And so God, if you decide to terminate my life last, help me store all the courage I might need within me first. No other form of grief beats the immense sorrow that you feel watching your loved ones go.....forever!!

Life on earth is but a fleeting moment in the sun, but the one after death is what you have to look out for.

lp

FAMILY LAW

THE ANCILLARY RELIEF OF A DIVORCED WOMAN

By: *Mukhtar bin Abdullah*

Before we go further to the above question let us know the meaning and the scope of divorce (talaq) that is permitted in Islam. In one Hadith the Prophet (s.a.w.) said:

انما الطلاق لمن اخذ بالساق

"Talaq is only permissible for whom who had entered a marriage".

Here, Talaq means to remove marriage restriction with words of talaq or the like - the word 'taliq' means that "you are free"; but this is not normally used in our (Malaysian) society. In a talaq situation, once the words are uttered there is no room for doubt - that is to say, it is enough to rely on what the husband express (verbally) - there is no need to ascertain his niyyat.

However, there can be situations where the expressions used or uttered by the husband may convey different and varied meanings, for example, the word uttered by the husband to the wife like this: "go out of this house" or "go and joint your family" or "I don't like to see you around" etc.

Under such a situation where the expressions used are not clear or gives rise to ambiguity, there is a need to trace and ascertain what the husband actually wants or meant i.e. whether he really meant to divorce (talaq) his wife. In this case a judge or Qadhi can make a decision as to his expression either through questioning the husband himself or through questioning his relatives as to what may have transpired or said by him (the husband) concerning his relationship with his wife.

The first type of expression (talaq) is called SO-RIHUN (صريح)

which means clear, without any doubt at all. The second type of expression is termed as KINAYAH (كنايه)

A situation may happen where a husband jokingly say he has freed his wife (taliq). According to Jumhur (Majority) Ulama', this type of talaq is valid. The ulama' rely on the Sunnah/Hadith authority

ثلاث جد من جد وهذا لهن جد
النكاح والطلاق والرجعة

"Three things whether done in serious or joking manner, should be considered serious - nikah (marriage), talaq (divorce) and ruju'.

The reason behind this is to close the door for those who try to treat such serious matters lightly.

In Al-Quran Surah Al-Baqarah 2:236:

لَا جُنَاحَ عَلَيْكُمْ إِنْ طَلَقْتُمُ النِّسَاءَ

"There is no blame on you if you divorce women."

There are two types of Talaq i.e.

1. Revocable (Talaq Raj'i) - There is a right to reconcile. Which is effected by one or two talaq; revocable during eddah. According to the Shafi school if reconciliation is done during eddah the husband must pronounce the ruju'.

وَيَحُولِيهِمْ أَحَقُّ بِرَدِّهِنَّ فِي ذَلِكَ
أَنْ أَسْرَادَ وَأَصْلَحَا

"The husbands have the better right to take them back in that period (during eddah)". (Al-Baqarah:228)

The parties may also be reconciled after eddah, however they must marry again.

2) Irrevocable (Talaq Ba'in) where the husband has no more right to take the wife back. This irrevocable talaq is divided into 2 :-

(i) Talaq Bain Sughra (small talaq) - the husband cannot rujuk during probation but if there is mutual agreement they can enter into nikah after eddah. In the case of khulu' (tebus talak) the husband cannot rujuk to his wife but he can marry his wife with a new mahr either in the period of eddah or after eddah.

(ii) Talaq Bain Kubra - this is where the husband pronounces talaq 3 times and he has no more right to take the wife back.

فَإِنْ طَلَّقَهَا فَلَا تَحِلُّ لَهُ مِنْ بَعْدِ ذَلِكَ
زَوْجًا غَيْرَهَا

"When he has divorced her (irrevocably) she is no more halal (lawful) to him until and only she marries another husband (other than him) and he (the new husband) has divorced her."

(Al-Baqarah: 230)

Although divorce is permitted it is not encouraged and is in fact, frowned upon. As the Prophet s.a.w. said in one Hadith:

أَبْغَضُ الْحَلَالِ عِنْدَ اللَّهِ هُوَ الطَّلَاقُ

"A lawful (halal) thing which Allah does not like is TALAQ."

Now, a wife has been given an explanation of divorce from the Islamic point of view.

Let us now examine the type of claims that the wife may apply for through the Syariah Court, from her husband.

Referring to Section 45(a), (b), (c) Islamic Family Law (Federal Territory) Act, 1984 the Court can only entertain the application of divorce when the marriage is registered under the Act, and was contracted in accordance with Hukum Syara' the residence of either parties to the marriage at the time of the application should be in the Federal Territory.

Referring to section 47 we should understand the court will only entertain the application for divorce when the details in prescribed form (Application For Divorce) is satisfied by the party either the husband or wife. This include the matters regarding to maintenance of the wife and children (refer to Section 55).

A talaq pronounced by the husband or by an order by the Court is not effective when the wife is in the period of eddah (section 47(16) or during pregnancy (section 47(17)).

When a Certificate of Divorce is issued (section 54(5)) it means that the marriage of that party is dissolved and the wife can make claims such as provided in the said Act.

The wife can apply to the court for a muta'ah (consolatory give) and the court may after hearing the parties order the husband to pay such amount as may be appropriate and just in accordance with Hukum Syara' if satisfied that the wife has been divorced without just cause (refer to section 56). The payment of Muta'ah in another word is to give some sort of financial adjustment to the wife for loss of consortium as well as to avoid fitnah that the divorce is due to a fault of a wife and to avoid any stigma she would face from society upon divorce.

The payment of a consolatory gift is enjoined in the Holy Quran.

وَمِنْ حَقِّهَا عَلَى الْمَوْسِعِ قَدْرَةٌ
عَلَى الْمَقْدِرِ قَدْرٌ مِمَّا عَمِلَ

"But restore them a suitable gift, the wealthy according to his means, the poor according to his mean a gift of reasonable amount." (Al-Baqarah 236)

According to Imam Shafi, Muta'ah is granted in cases where the marriage was consummated.

وَالْمَصْلَقَةُ مَتَاعُ الْمَعْرُوفِ حَقًّا عَلَى
الْمُنْفَعِ

"For divorced women, maintenance should be provided on reasonable scale it is a duty on the righteous." (Al-Baqarah: 241)

In order to value the muta'ah the condition of the husband should be taken into account. The husband is obliged to carry out the duty. Also during the eddah

period, the wife is entitled to obtain maintenance.

In exercising his power the judge has to take into account the husband's capability to provide the maintenance to which is on the same scale as before divorce.

There are several cases decided regarding the claim of Muta'ah.

In the case of NOOR BEE V. AHMAD SHANUSI (1978) the plaintiff has been divorced and applied to court to obtain, Muta'ah and shared property. The plaintiff before marriage was a clerk, then she resigned to accompany her husband who was posted in Sarawak. the Qadhi took note of the plaintiff's sacrifice (she resigned from her job to be with her husband).

HELD: Her application was granted and ordered muta'ah as compulsory payment on the basis of husband's capacity.

In RAHMAH BEE V. MOHAMD YUSOF (1978) The parties married in August 1970, in 1976 the husband divorced the wife. They have three children aged between 3 to 6 years. The plaintiff applied for maintenance, muta'ah and the maintenance for children.

HELD: The court granted her on basis of reasonable standard of expenditure and also order the husband to pay maintenance of the children.

In TENGKU ANUN ZAHRAH BT. TENGKU ABDUL HAMID V.

DATO' DR. HUSSEIN B. MOHAMED YUSOF (1980)

The plaintiff applied for muta'ah amounting to \$ 25,200.00. The court entertained her application and muta'ah was granted. The Respondent was a well-off person (a housing developer and business). The court therefore took into consideration the capacity of the husband.

In another case, ZAINOON V. MOHAMED ZAIN (1981). They were married in 1959. In 1977, the husband divorced his wife. The plaintiff (wife) made application at Syariah Court for, inter alia, Muta'ah (this was granted by the court amounting to \$700). For the purpose of that amount, the court took into consideration the husband's situation and also the wife situation.

So, it is proved that the wife could claim some amount of muta'ah from the husband. It is a consolatory payment which is made in accordance with Hukum Syarak to a wife who has been divorced.

By virtue of Section 57, on the dissolution of her

marriage the wife has a right to her maskahwin and pemberian or any part thereof.

There is also a maintenance a divorced wife is entitled to claim (reasonable maintenance) from her husband during the *eddah* on the same scale before divorce. (Refer to section 65) and the court will assess the maintenance (refer to section 61). The payment of maintenance is subjected that the wife is not *nuzyuz* i.e. an act of the wife towards the husband is regarded as disobedient according to Hukum Syarak.

Also, the woman who has been divorced has the right of accommodation till certain period (refer to section 71 (1) and the right to accommodation shall cease if the period of *eddah* has expired or if the period of guardianship of children has expired or if the wife (woman) has remarried (section 71 (2) (a,b,c) the thereupon the husband may apply to the Court for the return of the home to him.

Since the marriage has been dissolved due to divorce (or death), the wife could also claim a substantial share of all property acquired during the marriage or what is known '*carian laki-bini*' or *harta sepencarian* (property acquired by the joint effort of the husband and wife). Their joint effort is to be divided between them. The court shall have regard to the contribution by each party etc. toward the acquiring of the asset. (refer to section 58 (1-5). The rules of division of *Harta Sepencarian* are as follows:-

(i) If the party can prove that the property belongs to him/her, the property belongs to that party.

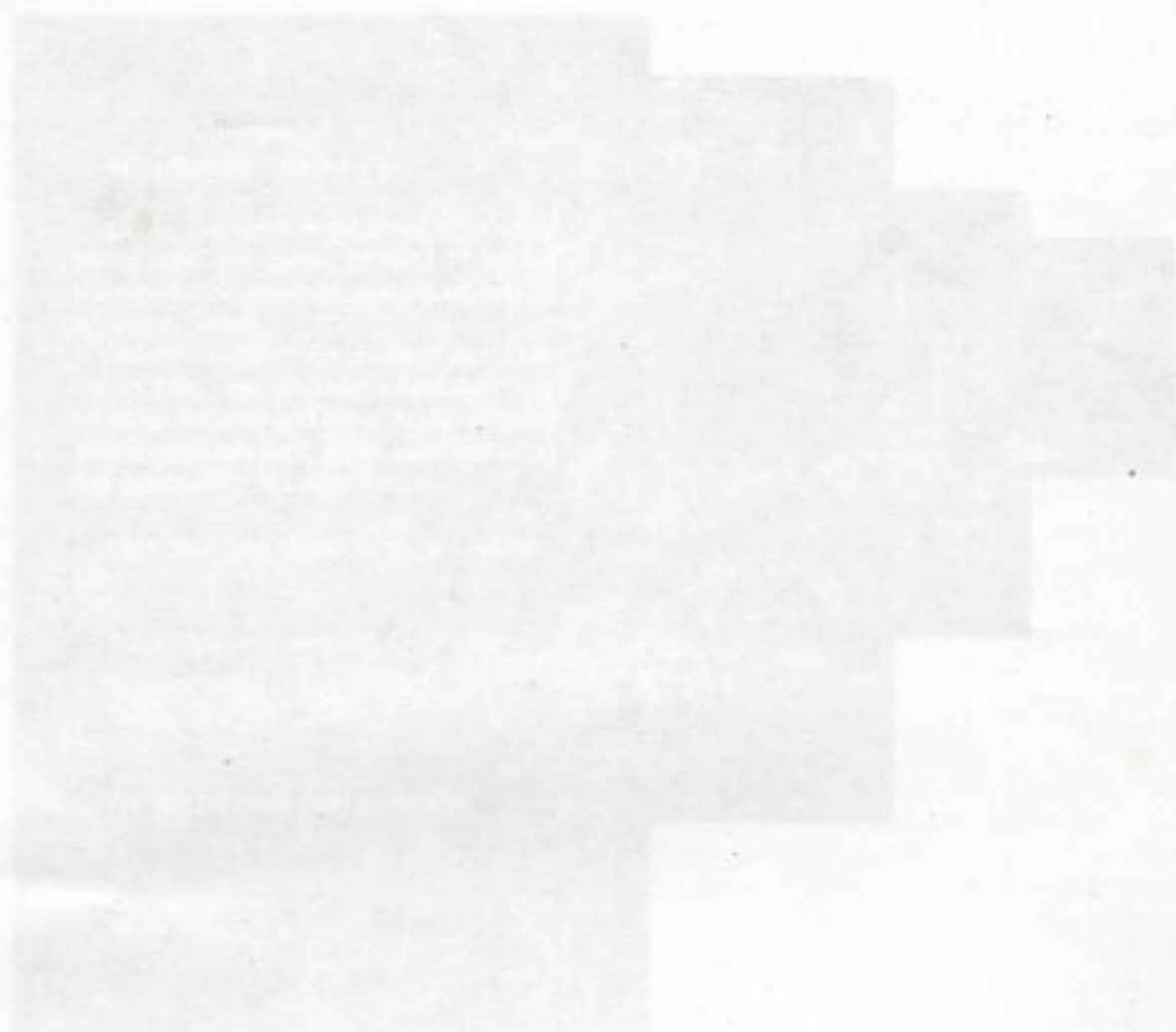
(ii) If the evidence is not sufficient to prove both have to take the oath (*sumpah syari'e*) - the property will be divided equally.

(iii) Under custom, if one can prove he/she put in more effort the division is according to the custom, if not, the rules (i) and (ii) above will apply.

In RAHMAH V. LATON (1926) the trial judge says that on the evidence of Kadhi, a widow is entitled to half of the value of the immovable property of her deceased husband at the time of husband's death.

In RAMAH V. ALPHA it was held a widow is entitled to claim upon all compensation of her share in the work of cultivation of land.

TO BE CONTINUED NEXT ISSUE



ENDING OFF



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We will be back next semester.

SIGNING OFF.....





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