IN THE HIGH COURT OF MALAYA
IN THE FEDERAL TERRITORY OF KUALA LUMPUR
ORIGINATING SUMMONS NO. WA-24NCVC-97-01/2019

In the matter of the widely publicised allegation by lawyer Hanif Khatri that the outcome of the late Karpal Singh's sedition appeal was altered due to judicial interference by a senior judge;
And
In the matter of Police Report No. Damansara /011544/18 dated 23rd August 2018;
And
In the matter of the public declaration by Court of Appeal Judge Justice Datuk Dr. Haji Hamid Sultan Bin Abu Backer, on 16th August 2018, of the alleged interference by a 'top judge' in the Indira Ghandi case;
And
In the matter of the duties of the Honourable Chief Justice of Malaysia ("CJ") as head of the Malaysian Judiciary;
And
In the matter of the administrative duties of the Honourable Chief Justice of Malaysia ("CJ") as head of the Malaysian Judiciary;
And

In the matter of Article 8, 124, 125 and Part IX of the Federal Constitution of Malaysia.

And

In the matter of sections 4, 5, 6, 12, 13, 14 of the Judges Code of Ethics 2009

And

In the matter of Judges Ethics Committee Act, 2010

And

In the matter of sections 23, 25, 84 of the Courts of Judicature Act, 1964;

And

In the matter of sections 41, 44, 45 of the Specific Relief Act, 1950;

And

In the matter of a Judges Oath of Office in the 6th Schedule of the Federal Constitution of Malaysia;

And

In the matter of Order 7, Order 92 r 4 of the Rules of Court 2012

And

In the matter of section 44 of the Evidence Act, 1950

BETWEEN

SANGEET KAUR DEO ... APPLICANT

AND

CHIEF JUSTICE OF MALAYSIA ... RESPONDENT

AFFIDAVIT
OF HAMID SULTAN BIN ABU BACKER

I, Hamid Sultan Bin Abu Backer (NRIC No. 550828-71-5003), a judge of the Court of Appeal Malaysia, having place of office at Court of Appeal Malaysia, Palace of Justice, Precint 3, 62506 Putrajaya, Malaysia do hereby sincerely and solemnly declare, affirm and say as follows:

Preliminaries

1. I am a sitting judge of the Court of Appeal, Malaysia.

2. I am affirming this affidavit as per oath of my office to preserve, protect and defend the Constitution, in particular to protect the Administration of Justice by exposing the scandals. I am of the view that I have a public as well as religious duty to expose the said scandals without fear or favour.

3. All the facts deposed to herein are within my personal knowledge, unless the context otherwise indicates.

4. I crave leave of this Honourable Court to refer to the Originating Summons and the Affidavit in Support affirmed by the Applicant, both filed herein, a copy of which was extended to me by the Applicant.

5. I have been requested by the Applicant to give an affidavit in support of her application which exposes constitutional crime and judicial misconduct by top judges as well as other judges who are aware and have directly or indirectly participated in judicial crime in breach of their Constitutional Oath.

6. Accordingly, I affirm this affidavit.

Introduction

7. I have direct knowledge of judicial and constitutional misconduct in the judiciary in consequence of at least 2 events, namely:

a) About a month before the 14th general election, a top judge and other judges including myself met for lunch at an Italian restaurant ("**Italian Lunch**"). During the lunch meeting, the top judge and a number of the other judges were concerned that they would be removed if the opposition came to power. Basically, it was a confession relating to guilt.

b) After the election, a senior judge informed me that there was interference in *Anwar's* case decisions at the Court of Appeal as well as the Federal Court and similarly also in *Karpal's* sedition case.

8. These 2 events brought me to flashbacks of other events which together made a strong case to call for Royal Commission of Inquiry ("**RCI**") as well as tribunalisation to expose judicial as well as constitutional misconduct of top judges with the aid and support of other judges.

9. I have exposed the judicial and constitutional misconduct publicly in my paper at the Malaysian Bar's International Malaysia Law Conference 2018, repeated in CLJ publication as [2018] 1 LNS(A) lxxxiv. In that paper, I have complained of the reprimand that I received from a top judge for my dissenting judgment in *Pathmanathan Krishnan v. Indira Gandhi Mutho & Other Appeals* [2016] 1 CLJ 911 ("***Indira Gandhi*** case") and as well called for RCI. In conclusion, I said as follows:

> I take a strong view that without a judiciary committed to Judicial Dynamism, the Rule of Law will be meaningless and corruption as well as kleptocracy cannot be arrested.
>
> I am now extremely inspired by our Prime Minister Tun Dr. Mahathir Mohamad who to me is a political, medical and religious miracle. To secure political power, Tun with other Political Colleagues have promised a true change with a view to deliver a New Malaysia. I only hope and pray for myself and all Malaysians, with the sacrosanct and unique elixir of youth endowed by the Almighty to our Prime Minister that Tun be blessed with a 'Lion Heart' to bring a miraculous change to our judiciary which is perceived to be impoverished.

To the members of the Malaysian Bar, I wish to say: "whether in politics or judiciary,' 'bad habits die hard'. Cosmetic changes to the judiciary may not be a constitutional solution to a judiciary which is perceived to have demonstrated judicial interference as well as Judicial Rowdyism. On the face of such perceived allegations it will be prudent for the Bar Council to move a resolution for the setting up of a Royal Commission to once and for all address these negative perceptions that are or has afflicted the judiciary. The ultimate aim must be to restore public confidence in the institution! This will augur well for judges whose decision will be scrutinized on its issues rather than on other perceived connotations beyond the realm of the Court room.

On a firmer note - I do not support Judicial Activism. I subscribe to Judicial Dynamism. In addition and notwithstanding that I have a large fellowship in the Malaysian Bar -when writing judgments I don't have any friends or enemies' and all my judgments are conscious judgments subscribing to my oath of office.

On a personal note I like to place on record that I have been greatly affected by the debate related to judicial activism, passivism and dynamism in the judiciary itself. I am continuously being harassed for some of my decisions directly or indirectly. If a royal commission is appointed I will gladly give my reasons.

On a serious note I like to be remembered not as any Hamid but Justice Hamid Sultan bin Abu Backer, who served the Malaysian Judiciary without Fear or Favour with meritocracy, integrity and also gumption, displaying Judicial Dynamism at the fullest.

On a lighter note – I went to do law in England at the age of 28. Until then I was a restaurateur and a master cook. I have a track record as a chief cook preparing briyani for 10 thousand people. You can have a cook in the judiciary, but New Malaysia cannot afford to have intellectually dishonest, morally corrupt and judicially incompetent judges to uphold the rule of law. The office of the judge is 'sacrosanct'. This what the Holy Quran says, I am sure the Bible, the Vedas and other religious text will say the same. [See 'Syariah Law, Administration of Justice and the Federal Constitution' by Hamid Abu Backer – Bar Council Journal 'INSAF']. I now challenge my good friends George Varughese - President and Steven Thiru - Ex-President of the Malaysia Bar, to propose a resolution at the Malaysian Bar AGM to say that I am intellectually dishonest, morally corrupt and judicially incompetent judge. If the motion succeeds, I will stop writing Janab law book Series and start immediately a chain restaurant in the name of 'Janab's Briyani House'. Hopefully, with the help of Dato' Ariff, I will be able to convince Tun Mahathir, to officiate the launch at Parliament House itself.

Wake up Malaysian Bar! Do your statutory duty under S.42 of the Legal Profession Act without fear or favour to 'Uphold the Rule of Law'. It is Now or Never.

Thank you.

Political or Judicial Rowdyism leads to Kleptocracy. Rowdyism here means acting in breach of rule of law.

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10. On the issue of *Anwar's* case, I will relate same flashback as follows:

a) About the time one Chief Justice who decided the *Anwar's* case was about to retire an event was held in the Palace of Justice, in which a book launch was also organised. A minister came and spoke praises of the Chief Justice and said that the government would not forget all the good things he has done etc (or words to that effect which I cannot remember in verbatim) which clearly indicated that he was going to have post retirement benefits. This statement by the minister was not aspiring for the judiciary as well as judicial integrity since it clearly demonstrated judicial integrity was compromised. Pre-retirement or post-retirement benefit, to me, is a corrupt practice.

b) Another member of the Federal Court who sat in *Anwar's* case just a day before retirement informed that he was meeting the Deputy Prime Minister urgently. This also goes against the separation of powers doctrine.

c) Another CJ who was an Antagonist of Rule of Law and Constitution ("**ARLC**") and who sat in *Anwar's* case was known for judicial interference.

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11. To me, all these events inclusive of the Italian Lunch shows judges were committing treasons out-rightly, for which RCI followed by tribunalisation or criminal prosecution is a must.

12. In addition, top judges introducing statutory code of ethics ("**Code**"), which had unconstitutional provisions in breach of article 10 and many other articles of the Federal Constitution, has made the judges to a status of labour contractors to clear back log of cases in an uncivilised manner by directions thereby compromising judicial integrity and quality in decision making. This seriously requires RCI. The Code also deprived the judges of their independence. No other civilised jurisdiction appears to have a statutory code of ethics, in the manner we have, formulated by the connivance of top judges, in which the current Chief Justice was one of them. Quite recently, the code was in issue due to the famous dance in Sabah. At this instance, this proverb comes to my mind: *"He who digs a pit for his brother will himself fall into it"*.

13. I am of the strong view that the Code must be repealed and an internal code of ethics by agreement of all judges must be brought into effect. In that it must be stated that each and every judge must bring to the attention of all judges any perceived misconduct by of judges to enable them to self-discipline.

14. At this juncture, I must say that under the Federal Constitution the judges of the High Court, Court of Appeal and Federal Court including the top judges are all of

the same category save that the jurisdiction to hear cases differs. The top judges are only involved in the administration and have no Constitutional mandate to impinge on the independence of any judge. In addition any judge of any court must be free from interference directly and/or indirectly. A judgement can be overruled but not expunged on matters related to law, Constitution, etc.

My Background

15. I must say that I have been a critic of the judiciary in relation to its lack of integrity as well as legal competence for more than 25 years. I have taken a strong position on these issues and have asserted, in my article, entitled "*Syariah Law, Administration of Justice and the Federal Constitution*" published by the Bar Council in INSAF as Volume XXIV No. 2, April 1995, that intellectually dishonest, morally corrupt judicially incompetent judges should not be allowed to uphold the rule of law.

16. This position was taken by me even 30 years ago after the decision in *Government Of Malaysia v. Lim Kit Siang & Another Case* [1988] 1 CLJ 219, ("**Lim Kit Siang case**") where the Supreme Court closed the door for accountability, transparency and good governance by the government thereby abdicating its role as supreme police man of the constitution. That decision was in breach of constitutional oath of office and it paved way for corruption and subsequently a kleptocracy regime. Whether that decision was as a result of

intellectual dishonesty, moral corruption or judicial incompetence has not been established yet. I have criticised that judgment in many cases and to debunk the decision I developed the jurisprudence related to Constitutional Oath of Office.

17. After the Supreme Courts decision in *Lim Kit Siang's* case many events took place and judges were misconducting themselves. While I was serving as an elected council member of Bar Council, we have received a number of complaints of judicial misconduct as well as judicial dead woods (those who do not have enough reported judgments to justify their position in the apex court) and/or incompetent people promoted to apex court but very little Bar Council could do to remedy the position.

18. I was a strong advocate of judicial integrity and competence even then and I took upon myself to write about the consequence of judicial misconduct in extremely critical terms and even went to the extent of doing a doctorate degree (PhD) in civil procedure and justice to address the misconduct of judges dismissing cases without hearing the merits.

19. I wrote the INSAF Article to express my disgust. To avoid the article from indignifying the judges, I couched the article under *Syariah* principle. Any lawyer reading the article at the material point of time will appreciate whom the article was aimed at. I sent it to Bar Council for publication in INSAF, which the Bar Council did so. Some members in the editorial committee had some reservation

for it to be published. However, the late Raja Aziz Addruse gave the green-light for its publication and told it was indeed a courageous article. The article was also published in a book entitled *"Janab's Key to Practical Conveyancing, Land Law and Islamic Banking"*, 2003 at pp. 434-461. I have referred to the article below to show my consistency in affirming this affidavit for public good as well as to demonstrate judicial weakness currently existing. The relevant part of the article reads as follows:

> Justice and equity in the administration of Syariah could never be questioned. However to get the quality of people to administer such divine and just law needs sincere and great effort on the part of the state to find, train and appoint people of high calibre. Understanding and appreciating the values of Syariah law is never a difficult task but in the hands of intellectually dishonest or morally corrupt or legally incompetent judges, the Syariah law or any law for that matter will never serve its useful purpose.
>
> Justice and equity under the Syariah principle is divinely ordained and free from corruption. However, some authors observe that Islamic State existing as early as in the 10th century have used the Syariah Courts as political tools to advance their own cause and convictions and to achieve their own purposes have, at times, successfully placed their own cronies to administer justice. This back door entrants to the bench obliged their political masters and acted unjustly merely to obey the will of their political masters. As back door entrants, these cronies were intellectually dishonest, morally corrupt and judicially incompetent and always needed crutches (support of political rulers) or they would have been the first to be eradicated by the same system they administered. As a result they compromised their position as judges and brought great dishonour to the divinely ordained system in the eye of Muslims as well as non-Muslims. Ironically judges who were supposed to safe guard the legal system to some extent were partly or wholly responsible for destroying the Syariah administration of justice in the Muslim countries. These attributes of judges were due to their own

human weakness and not due to the weakness of the divinely ordained system. Professor Coulson in the chapter Islamic Government and Syariah law observes:

"The Abbasid rulers maintained a firm grip on the helm, and the Shari'a courts never attained that position of supreme judicial authority independent of political control, which would have provided the only sure foundation and real guarantee for the ideal of the Civitas Dei. (God's law)."

Under the Islamic administration of justice jurists have developed a set of strict rules to check judicial vagaries. The jurists are fully aware that the societies and the state will not prosper without proper administration of justice. The office of the judge is seen to be the highest position in the society as it was previously held by the prophets. According to the Maliki jurist, Ibn Farhun the knowledge of adjudicating and the act of delivering judgement stands supreme among all sciences. Caliph Ali in one of his letters has described the criteria for the appointment of judges.

"Then select (that one who seems to you the best of the people for the post of qadi: one with whom the matters do not become narrow and difficult and whom do not infuriate the litigants. He who does not brood on greed. He who does not stop at the ordinary understanding afore (reaching) the farthest. He who pauses at doubts (and thinks). He who concedes most to arguments and does not become tired of hearing and the most perseverance in discovering the truth of facts. The most expedient when he reaches the final conclusion...Then frequently examine his judicial work and spend on him with bountiful hand that remove his ills and minimise his needs unto people. Confer on him such a high position (in your hierarchy) that even your most chosen persons do not covet."

Learned author Azad Ghulam Murtaza observes:

"In Pakistan, the code of conduct for the judges lays down that a judge should be God-fearing, law-abiding, abstemious, truthful of tongue, wise in opinion, cautious and forbearing, blameless and untouched by greed. While dispensing justice he should be strong without being rough, polite without being weak, awe-inspiring in his warnings and faithful to his words, always preserving calmness, balance and complete

detachment, for the formation of correct conclusions in all matters coming before him. In the matters of taking his seat and of rising from his seat as a judge he should be punctilious in point of time. In his behaviour, while in his seat, he should be mindful of the formal courtesies, careful to preserve the dignity of the court maintaining an equal aspect towards all litigants as well as all lawyers appearing before him. He must decline to decide a case involving his own interest or his close relatives. He should refrain from entering into a business dealing with any party to a case from him. He should ensure that justice is not only done, but is also seen to be done. As for gifts, it is laid in the code that gifts are to be received only from near relatives and close friends, and only such as are customary."

20. My Curriculum Vitae is as follows:

Justice Datuk Dr. Hj. Hamid Sultan Bin Abu Backer is a Judge of the Court of Appeal Malaysia.

He is an Honorary Fellow, Middle East Institute (MEI), National University of Singapore; an Honorary Visiting Professor of Damodaran Sanjivayya National Law University (DSNLU), Visakhapatnam, India; Adjunct Professor of International Islamic University Malaysia and Multimedia University (MMU) and also Panel Advisor of Islamic Science University of Malaysia (USIM); a barrister and a fellow of the Chartered Institute of Arbitrators (London). His doctoral thesis was on Civil Procedure and Justice. He is also a graduate in Economics and holds an Honours as well as a Masters degree in Insurance, Shipping and Syariah Law from the University of London. He holds a Post Graduate Diplomas in Islamic Banking and Finance and also in Syariah Law and Practice (IIUM).

He was a member of the Malaysian Bar Council for more than 6 years and has served as Chairman in various committees. He has been invited as a visiting Scholar of University of Sheffield in United Kingdom, and had spoken on Enforcement of Foreign Arbitral Awards in England at Chartered Institute of Arbitrators, London as well as City University of London; Attorney General Chambers, Sri Lanka; Chennai, Ambedkar Law University; DSNLU Visakhapatnam, etc.; Leeds University, England; 'Maison du Barreau de Paris, Paris; EBS University Wiesbaden, Germany and Hong Kong,University. He had also spoken on Arbitration Clause in Islamic Finance Facilities in Doha, Hamad Bin Khalifa University Qatar; He participates in various other activities of Universities such as examiner of PhD thesis, external examiner, Guest Speaker, etc.

He has written about one thousand judgments which cover most areas of the law. He has authored books on various subjects including Civil Procedure, Criminal Procedure, Evidence, Conveyancing, Islamic Banking, International and Domestic Arbitration and on other areas of commercial law. His books are not only widely used as text books in all institutions of higher learning offering law but also by all who are involved in the practice and administration of law in Malaysia

My Observations from Bench

21. While serving the judiciary I could sense judicial misconduct in many forms but all that was not enough to make a complaint in strong terms to relevant persons like the President of the Bar, etc. save for the reprimand that I received, for delivering my dissenting judgment in *Pathmanathan Krishnan v. Indira Gandhi Mutho & Other Appeals* [2016] 1 CLJ 911, from a top judge whom I will refer to as ARLC.

22. The opportunity only came immediately after the election where a judge who sat at the Court of Appeal coram that decided the case of *Karpal Singh Ram Singh v. Pp & Another Appeal* [2016] 8 CLJ 15 voluntarily confessed to me that the verdict in favour of late Karpal Singh was directed to be changed. The judge who told me was a senior most judge of the Court Appeal. He was well respected for his passion and knowledge in criminal law.

23. I have set with him a number of occasions. His independence and impartiality cannot be questioned. Despite his seniority and strong knowledge in criminal law many deadwoods or those who were perceived to have compromised integrity have bypassed him in elevation to the Federal Court on several occasions.

24. It was during ARLC period that I virtually saw the rule of law being blatantly abused and many judges were dancing to his tune for probable promotion. In fact, ARLC had created a group of judicial rowdies of judges at all levels in consequence of the judiciary being infested with graduates of one university or from service. Many in the apex courts including the Court of Appeal were single degree holders in this time and era displaying that they never had any inclination to upgrade themselves in law and needed crutches to get to the top.

25. Thus, many were prepared to abide by direction as they also did not have the number of judgments to be considered for elevation at the first instance. ARLC

made use of the weakness as well as past network since at least 80% (or more) of judges come from the same university or service.

26. Again, those from the same university who had more than one degree did not have the number of judgements to be considered for promotion. Having said that, there were and are a number of good judges from the same university but they were not prepared to openly criticise ARLC of his wrong doings.

27. Once ARLC whom I thought was a quiet man with not much of any article of local or international repute and who keeps good registrars to draft judgments upon elevation to top posts became a sort of *Maharajalela* dictating what the judges should do and write. He went to the extent of telling some of the Court of Appeal judges that he did not agree with the judgment - meaning he will with help of his judicial rowdies overrule the judgment.

28. I thank the Almighty for giving me the extreme honour to expose Constitutional crime as well as judicial misconduct in the Malaysian judiciary without fear or favour for public good, also consistent with my constitutional oath of office to Preserve, Protect and Defend the Constitution by way of this affidavit as well express some views for the betterment of judiciary on the strength of my Curriculum Vitae. To appreciate this affidavit, I would like to set out some background of myself and the law.

29. I went to do law in England at the age of 28. I have secured a number of qualifications from reputed Universities. I secured all my qualification without being a day scholar but all through home studies in various aspects. I had complete passion in the pursuit and dissemination of knowledge as I take the view it is the greatest form of Devotion to The Almighty.

30. To achieve that, I had written a number of books and articles. These books are study material in all the law schools in Malaysia. My articles have been published globally and often upon invitation I have spoken in many countries. From the day of my appointment as a Judicial Commissioner and now as a judge of the Court of Appeal, I have written a number of judgments which are often seen as landmark judgments or judgments which have contributed to the administration of justice primarily focusing on the protection of the poor, needy and oppressed. They set out proper guidelines for the executives and/or legislature by my decisions in judicial review cases without fear or favour in a manner not done by other judges.

31. In this respect a handful of my judgments will speak for themselves. Even as a Judicial Commissioner, I have made known through my judgments in public law matters that I am a proponent of Constitutional Supremacy and will not subscribe to Parliamentary Supremacy doctrine which was conveniently applied by the judiciary even then based on the decision in the above said *Lim Kit Siang* case, where the Supreme court opened the door to corruption to the detriment of public interest which ultimately in my view led to a Kleptocracy regime.

32. I have condemned that judgment in a number of my judgments and articles which I do not wish to repeat. To denounce that judgment I developed the jurisprudence called Constitutional Oath of Office and developed it in a number of judgments. They are as follows: *Nik Norhamizi, Nik Nazmi, Teoh Beng Hock, Indra Gandhi, Leap Modulation,* etc.

33. Some of my judgments will take extraordinary steps to protect public interest all within the constitutional framework and rule of law which some top judges has seen those judgments to impinge the protection of Kleptocracy Government then.

34. The top judges then were happy with my jurisprudence of Constitutional Oath until the case of *Nik Norhafizi* and they blew when I wrote my dissenting judgment in the case of *Indra Gandhi.* I will explain this latter.

35. Great lawyers and / or good lawyers of our time have appeared before me. Most of them are specialist in their own fields as opposed to Datuk Gopal Sri Ram who is an all rounder. Due to my writings, unlike many others, I have a wide exposure to various subjects of law and can say I know some law as a judge and have expressed in my judgements as opposed to judgments of other judges which nowadays are largely a 'cut and paste' of submissions of counsels or judgments of court below even at the apex level or drafts done by registrars, etc. In a forward to one of my recent publications Datuk Gopal Sri Ram said:

The works of Justice Datuk Dr Haji Hamid Sultan Bin Abu Backer has rivalled and even out-stripped Commonwealth writers of legal texts. One cannot have a more diverse selection of subjects than those produced by the author. Specialisation marks the knowledge base of an author. The five works, namely Janab's Key To Civil Procedure; Law of Evidence, Advocacy and Professional Ethics; Practical Conveyancing and Islamic Banking; Criminal Procedure; and Law, Practice and Legal Remedies comprising 15 law subjects, now available to lawyers, students and teachers stand as evidence of Justice Dr Hamid Sultan's expertise on each of these subjects. This is, to say the least, a rarity.

36. In fact in all humbleness I must say probably there is no person in the judiciary of equal qualifications in variety of subjects or writings or repute as a jurist and in consequence I take the view that I am most eminent to make this affidavit in support of the case of the Applicant herein as well in the capacity as a senior judge to express my views in the perceived lack of integrity as well as competence of top judges of the past and also present who had scandalised the administration of justice with the aid of other judges and continuing to do so.

37. In my view this strong statement from me is necessary for the prayer of the Applicant to call for RCI as well as for the Bar Council seeking the same. I must say that the judicial administration of justice is perceived by many to be in a sordid state of affairs and that is also supported by many articles by eminent lawyers and writers and I will list a few as follows: Gerald Lourdesamy, N

Surendran, Teh Yik Koon, A Kathirasen, P Gunasegaram, Datuk M Santhananaban, etc. Top judicial officers in the past had not responded to the criticism in all these articles thereby in effect admitting the contents of articles. The CJ continuing in office as head of the judiciary without proper remedial action is an infringement of oath of office as well as a despicable act in New Malaysia.

38. In saying so I acknowledge that there are a number of good judges of integrity as well competence in the Court of Appeal as well as at the High Court including judicial commissioners. I cannot say the same for many of the apex judges in the past and present as they knew of the wrongdoings and did not lift a finger to stop the judicial massacre in the administration of justice. In fact some of the senior ones were directly or indirectly involved in fixing of coram or had full knowledge of constitutional as well as judicial misconduct and were silent or supported the constitutional crime by top judges for their own selfish interest related to promotion, etc. thereby destroying the integrity of the administration of justice.

39. The contents of my affidavit are *prima facie* to expose Constitutional and judicial misconduct before election and also after election which is continuing without abate as there are sufficient material to purportedly say top judges are continuing to mislead the public by conniving not to expose judicial crimes. The CJ himself not seeking RCI when the Bar Council has publicly demanded twice for RCI - this is one of disappointments and regrets. In addition, a former Chief Justice has sarcastically questioned the integrity of the CJ. The CJ has not responded to it.

The said article of the former CJ, which by itself warranted RCI appearing in NST on 05/09/2018, read as follows:

At the International Malaysia Law Conference on Aug 16, Justice Datuk Hamid Sultan Abu Backer revealed that he was reprimanded by a top judge for giving a dissenting judgment in the Indira Gandhi case in 2016.

On Aug 23, the daughter of the late Karpal Singh lodged a report following claims by a lawyer that a senior judge had meddled in the decision of the sedition appeal case involving her late father.

On Aug 31, a daily, quoting a statement by the Chief Justice's Office, reported that an internal inquiry into the allegations had begun. According to the statement, "after the result of the internal investigation is received, the chief justice will take the appropriate action".

Since an inquiry into alleged judicial interferences is being carried out, I would like an inquiry to be done to find out:

WHETHER there was interference by any judge that had led Federal Court judge Rahmah Hussain to change her mind to give a dissenting judgment in Datuk Seri Anwar Ibrahim's first sodomy appeal in the Federal Court after she had initially agreed with my draft judgment; and,

WHETHER there was any judge who wrote or assisted her in writing her dissenting judgment and, if there was, to identify the judge.

To avoid any likelihood of conflict of interests, Chief Justice Tan Sri Richard Malanjum should not be a member of this inquiry.

TUN ABDUL HAMID MOHAMAD

The ex-CJ imputing impropriety and saying the CJ should not hear as conflict of interest. The current CJ had never responded to this article. The judiciary and top members know that is the reason he cannot do anything save to be bound by their dictates.

40. Following from the said article, some flashback of events is most appropriate to be said. Immediately after CJ took his oath of office, there was a ceremony held at Putrajaya. In that ceremony, the CJ gave a speech in the presence of judges and Bar President, who was sitting in front of me. During the speech, the 2 past CJs were speaking to each other giggling etc to demean the CJ. The Bar President was extremely upset and he turned to me to say 'why are these people so rude'. Subsequently, after the event, the Bar President again in an upset manner complained to me. My immediate response was that 'yes, it was rude - may be they know more things about the CJ that made them giggle and make fun in a public ceremony which is often seen as sacrosanct in nature.

41. In my view no judge or judicial authority should resist RCI, taking into consideration my public complaint of judicial misconduct in my paper delivered in the International Malaysia Law Conference 2018. This is in addition the police report of the Applicant which come from my information given to her as well as many others including few of her brothers. She had reported that late Karpal Singh acquittal by majority was asked to be reversed to conviction by a top judge.

42. One lady judge refused to abide by the instruction of ARLC and in consequence the conviction was affirmed by majority. I must say the lady judge who refused to abide was one of the most hard-working judges with most number of judgments, and well known for her knowledge, candour, courtesy and fairness. She had also confirmed with me of the interference and it will appear many other judges also knew of the interference even before I came to know of it.

43. Her refusal to abide to ARLC instruction later became fatal to her promotion and she was deliberately bypassed in elevation to the Federal Court, in which bypassing the present Chief Justice as well as well one of the top judges and a Federal Court judge were present.

44. Only after the 14th general election she was promoted to the Federal Court but she has lost her seniority as well as some income and to some extent indignification in office which would have caused her as well as her family members and friends an undue stress. This would not have happened had she been promoted earlier. This ghastly act needs an RCI independently by itself to investigate how the judicial appointment commission ("**JAC**") bypassed her.

45. In my view the lady judge was the best Malay lady judge in our judicial history. I say this because she is the only judge in the Malaysian judiciary so far who has written most number of reported judgments under the female category. I take the

view that she has been severely victimised for her stand in *Karpal's* case with connivance of other judges present in the JAC then and still in the judiciary.

46. Other judges in the past and present largely had only a fraction of judgments some with bare minimum to even say they are qualified to move up the the Federal Court. The patent unfairness in selection process has resulted in patronage culture of promotion that too from members of the same university or service sufficient to support wrong doings of top judges, thereby destroying the integrity of the judiciary itself.

47. Karpal case has also another dimension. It will appear interference could have also taken very much earlier at the stage of the first appeal to the Court of Appeal in Karpal cases, wherein one of the current top judges was a coram member and wrote the judgment that called for defence. This was achieved by giving a wide meaning to the definition of 'seditious tendency' in breach of Article 7 of the Federal Constitution, which will make the decision itself unconstitutional. In addition there may be also an issue of coram failure as one member of the coram from Sabah may not have appreciated the full effect of the judgment written in Bahasa Malaysia. The other coram member was a well known lawyer, politician etc, who also sat with me in the case of Nik Norhafizi, which I have stated below. That will demonstrate he was a past government support who was conscious of 'Arab Spring' which I will explain shortly.

48. It is a notoriously known fact that because of extension of the meaning of 'seditious tendency' many opposition party members were charged and / or convicted, depriving them of an opportunity to stand for election. This case also requires an investigation through RCI. Writing judgments in breach of Federal Constitution to fix up citizens and/or politicians in my view is a ghastly act which warrants investigation. It can only be done first by RCI. If through RCI it is established that there was a judicial conspiracy to fix up then appropriate prosecutorial action need to be taken.

49. I will broadly state matters which are *inter alia* relevant for RCI as follows:

(A) The reprimand made against me by ARLC and continuous harassment of top judges as well as other judges which I will deal with later together with other matters which undermines the integrity and independence of the judiciary, warranting RCI.

(B) A senior most judge of the Court of Appeal, after the election, had informed me wrong doings by top judicial members and judges which was within his own knowledge. There are two matters which he told me which shocked me though one matter was within the speculation of judges inclusive of myself. That was do with Anwar's Appeal in the Court of Appeal. The judge told me that the Court of Appeal coram was called to the chambers of top judges regularly and was

briefed what to do. There are more that I would like to say in relation to this, but I will reserve it to say it to RCI.

50. The second information was actually a confession of a constitutional crime orchestrated by ARLC. The judge who had informed me was a coram member of Karpal's appeal in the sedition case. He said the decision of the Court of Appeal before pronouncement was an acquittal by majority. However, one top judge called the coram requesting to dismiss the appeal, which means the conviction to stand. The lady judge who was a coram member and was in the majority refused to abide. However, the other agreed to change acquittal to conviction. In consequence the majority affirmed the conviction.

51. The senior judge also told me that the top judge had meddled with judicial matters and he was very upset over his conduct which he complained had undermined the integrity of the judiciary itself. There is more that I want to say on this but I shall reserve it to say to RCI.

52. The incident above happened within a week after the election when top judicial members as well as their associates were extremely stressed and worried the new government will take action against many including tribunalising them. In fact one month before the election during a monthly lunch organised in an Italian restaurant in April 2018, which I earlier referred to as the Italian Lunch, a group of

judges sitting in my table consisting of about 10 judges with one top judge were worried that if the opposition wins they will be tribunalised or asked to leave.

53. It is one of common sense to me that only those who have committed ghastly constitutional crime will fear being booted out. To me it was a clear case of confession which will require an RCI to find out the root cause of their fear warranting a dismissal.

54. On my part I told a senior judge in his capacity as the senior most judge of the Court of Appeal to write to other judges to seek their consent whether they will be prepared to inform the New Government to resign en bloc with the right to the pension benefits, etc. with an option for the Government to establish an independent JAC and select any of the current judges and where possible to provide opportunity for those other judges not selected to serve in other capacities in the universities, etc.

55. The judge agreed to write but later did not do so. I also at that material time informed a Federal Court judge who was a close friend of ARLC to inform him of the option which I have stated earlier. He did not come back to me. All these judges who were scared of reprimand became extremely happy when the members of the Old Regime in particular the PCA and CJM were appointed. The talk among the judicial members were that they were appointed because of the

influence of an ex-minister who they have served earlier. I will reserve my right to say further to RCI.

56. They all knew it was business as usual and all the fear of tribunalisation had disappeared overnight and now they are looking forward to top positions upon vacancy. To me I see it as one movement from a kleptocracy regime to another and nothing more. This is reflected in the pressure and hurriedness expressed by various quarters to increase the age of judges to 70. The current group of judges in Federal Court are largely tainted.

57. More descent ones can be secured from Universities with doctorate degrees and be trained with a short period of time inclusive of respected legal practitioners from the Bar and also from AG chambers. It will be travesty to appoint those who were instrumental to the decline in judicial integrity as well as competence to top posts when they should have been tribunalised for bringing the judiciary to public ridicule. I say this because of the Italian Lunch conversation where it was clear that the top judges and Federal Court judges were misconducting themselves.

58. About the same time after the election a registrar who was very stressful in consequence of wrong doings of top judges which may also put his position in embarrassment disclosed to me that two top judges with the help, finance and assistance from one arbitral institution had obtained an opinion from a QC to sustain their position as Additional judges for the purposes of continuing with their

position notwithstanding the constitutional retirement age. Constitutional crimes are treasonous in nature as it undermines the dignity of constitutional appointment authority. This is a sufficiently serious matter for RCI as well as MACC to investigate or the AG to press for investigation. Protecting the corrupt person or corrupt values must not be a norm for New Malaysia.

59. On the issue of constitutional retirement age amendment, it is within my knowledge that top judges had informed that they are negotiating to extent the retirement age to 70 years. Most of the judicial members were aware of that and we were told the old cabinet had approved it and they needed two third majority which they had not obtained.

60. This negotiation in breach of separation of powers started some 5 years ago. It is common talk among judges that a retired Federal Court judge was, for the first time in judicial history, appointed as an additional judge to pave way for top judges to continue with the position in the event a constitutional amendment could not be effected. This is actually what happened when a top judge wanted to continue to hold the position as an additional judge.

61. We were told that the then PM had suggested to the CJ then that ARLC to be given the opportunity to continue as an additional judge. The top judges had no fear of constitutional challenge as they had sufficient number of judges from the

same university and/or service obligated to them who will be sympathetic to their plight or to put it crudely, their greed.

62. When Bar Council filed the action to seek a declaration of their unconstitutionality in 2017 itself the matter was not heard and disposed of by the coram who were from the same university and/or service notwithstanding the matter was one of acute public importance involving the judiciary as well as administration of justice. Any competent coram can decide the issue on the spot as it involved only an interpretation of the Federal Constitution.

63. In my view no other matters could have taken precedence over that as it involved the constitutional legitimacy of the judicial process itself. Despite the application was related to their friends of close proximity the coram did not recuse themselves either, though subsequently after close of submission as well as after election they attempted to justify one member of the coram recusal by eloquently justifying under bias principles. The coram also continued to stall the matter notwithstanding that a constitutional crime amounting to treason or interference in administration of justice and other penal code offences would have been found to be committed if the coram had decided it to be unconstitutional.

64. The election result was not in favour of top judges and also those who aided or abetted or did not protest the ghastly conduct of top judges who had orchestrated to scandalise the constitution after retirement. Even after the election the coram

did not decide expeditiously. One member of the coram retired early and another member of the coram retired purportedly and / or conveniently on the pretext of bias doctrine.

65. If bias doctrine was at all genuinely relevant to the coram they ought to have recused themselves at the inception of the hearing on the ground the top judges are university mates as well as persons who had been instrumental for their promotion. Finally one lady judge on behalf of the remaining panel eloquently ruled the action as academic when academic principal is largely connected to private rights and not public law related to treason or oath of office or crime, particularly when the declaration if not in favour of the top judges will necessarily warrant prosecutorial measures, etc.

66. Issues relating to crime can never become academic. Justifying judicial decisions by comical jurisprudence impinges on integrity as well competence. To put it simply the judicial initiative to extend their retirement age, as well as the conduct of the coram abdicating its role to decide on the constitutional issues is a matter which will attract constitutional crime warranting RCI.

67. In addition the present judicial members perceived to continue in the same path to seek the extension as seen from recent events also requires an RCI. Further, the Chief Justice who upon appointment directed the judges to clean the toilets as opposed to his job to clean the judiciary was a grave misconduct on his part as

well as Oath of Office of a magnitude never heard off in our judicial history or also in any other countries.

68. In jurisprudential term, judges' role has nothing to do with cleaning of toilets but because of judges' code of ethics they were obliged to follow. Some judges have complained to me of the conduct. I consider it as a human right abuse itself and indignation of office of judge.

69. I must say the carrot to extend to 70 years saw number of decisions in favour of past government in unprecedented manner. In fact judicial fixing of coram to achieve the desired result was rampant. There was an instance one judge close to the top judge told me that any body seeking promotion must proof themselves in making hard decisions against opposition interest and in favour of the government.

70. Indeed many of the opposition cases did not succeed including the matters related current PM. Some judges in the matter of current PM cases were exposing comical jurisprudence. In one case brought by the current PM, one judge told me the relevant High Court judge was called by ARLC to dismiss his application.

71. Judicial interference from top judges was rampant. The code of ethics was in their favour and with the assistance of unconstitutional Managing Judges the

interference process was easy and the top judges were getting relevant information to direct selected judges to hear matters to reach the desired result.

72. In fact it was openly said by some judges that only Managing Judges will be given preference for promotion. In consequence it can visibly seen the competition in coming out with favoured judgments to get the premium job of unconstitutional Managing Judge during the reign of ARLC became explicitly noticeable.

73. All most all of the Managing Judges were chosen from the same university or service. Mixed coram in true sense was not practised by top judges and it was deliberately done by manipulation of judicial appointing process. Most of the constitutional judgments were controlled by top judges and their coram to support the past government. The magnitude of the scandal is unimaginable during the period of ARLC and it can be seen in public interest cases and boundary delineation cases, including sedition and peaceful assembly.

74. From the time I was appointed a judicial commissioner I wanted to make it clear that I was a proponent of constitutional supremacy and not Parliamentary supremacy. I was the first in the commonwealth to develop the jurisprudence related to Oath of Office. I just wanted to make clear to the appointing authority they need not confirm me as a High Court judge from judicial commissioner if they do not agree to my jurisprudence.

75. The first case on point was *Chong Chung Moi @ Christine Chong v. The Government of the State of Sabah & Ors* [2007] 5 MLJ 441 and subsequent cases were as follows: *Yong Fuat Meng v. Chin Yoon Kew* [2008] 5 CLJ 705 HC, *Indira Gandhi Mutho v. Pengarah Jabatan Agama Islam Perak & Ors* [2013] 7 CLJ 82 HC, *Nik Nazmi Nik Ahmad v. PP* [2014] 4 CLJ 944 CA, *Nik Noorhafizi Nik Ibrahim & Ors v. PP* [2014] 2 CLJ 273 CA and many more. There was no objection to the jurisprudence by the judiciary on the concept during my period as a judicial commissioner. As a judicial commissioner I wrote most number of judgments and when I was confirmed as High Court judge the trend continued. The top judges were very happy and within a short period after appointment as a High Court judge I was appointed the High Court representative for Rules Committee, a honour which is often in the past given to the most senior judge of the High Court or of that category. In fact, the top judges have cited my disposal of cases as a bench mark to follow. I have politely told them not to do so as I am a different category in learning, writing and passion for the law.

76. I played a major role in expeditiously coming out with the rules principally with the robust work put by the Bar Council representatives as well as AG chambers. Once the Rules were completed I was quickly promoted to the Court of Appeal bypassing more than 20 judges in seniority. Naturally the top judges were happy with my work including the Oath jurisprudence. Problem started when that jurisprudence was applied in a case where the top judges wanted the decision to be in government favour.

77. I will now deal with the reprimand that I received from ARLC in relation to my dissenting judgment in *India Ghandi* case. Before I do that I must set out some background of my judicial decisions in public law matter which were causing much anxiety and stress to top judges as well as Federal Court judges, as my decisions were not in favour of the past government.

78. There was also general perception that the apex court coram in civil and commercial cases related to important personalities were made in favour of them and on the face of record it will appear to be the result of judicial interference and / or manipulation. I can give some example to RCI and I am sure other right minded judges will also be happy to give information to RC

79. The first case which got me into some trouble was one related to my decision on constitutionality of a section 27 of the Police Act 1967, which now has been repealed and replaced by the Peaceful Assembly Act 2012. In that case the trial court convicted the accused and the appeal came before the Court of Appeal, where I was one of the coram members. After hearing the submissions, no decision was made by the coram but I was given the honour to draft the judgment of the court and circulate to the other coram members for their approval. I wrote the judgment articulating the jurisprudence relating to constitutional supremacy and concluding that the section was unconstitutional.

80. It was first of its kind in our judicial history related to the repealed Police Act. Upon circulation of the draft one coram member approved the draft. However, the other member informed he did not agree and will write his draft and circulate it.

81. After some time the member circulated his draft. A meeting was held to discuss the drafts. This is a usual procedure to enlighten why jurisprudentially the member's draft should form the unanimous or majority decision. Such discussion is permissible. What is not permissible is for one member to put extraneous pressure unrelated to the law to convince a judge to accept his or her draft.

82. During the discussion the member who had a draft disagreeing with me told the other member "if you follow Hamid's draft it will create 'Arab Spring' and there will be unrest to topple the government", etc. More was said which is not necessary for me to set out here. The other coram member quiet reluctantly agreed with that member. Then I was asked whether I would change my position. I said "No". I said I would keep to my Oath of Office and Rule of Law and would not submit to irrelevant consideration. Then, the other judge who knew me very well for long number of years told me with a real scorn in a polite manner "if you write like this you will have no future in the judiciary." My immediate response was that "I am not looking for a future in the judiciary but just here to do my work as per my oath of office."

83. That judge was very influential person. To speak to him like that was an act which would bring trouble to me. True enough the CJ at that time, who had high respect for my work and who would often request me to assist in preparing his speech, called me to discuss of a speech he had planned to deliver.

84. After the discussion he told me in a friendly manner that he was happy with my work but I must be careful in what I write in my judgment when it relates to the government. He said "if the government was not happy with you if I recommend a promotion it will be rejected." Then he told me that Dato' Seri Mohd Hishamudin Yunus had suffered the consequence. I quickly told him "I will continue to live up to my oath of office and there will not be any change in my jurisprudence." However, I told him "when my time comes you must recommend my name and I will not be offended if the PM rejects my name." He laughed and said "it is still a long way to go" and the conversation ended and I left.

85. After the conversation and my dissenting judgment in that case many of my friends in the Federal Court were slowly taking steps to distance themselves from me. From the episode it was clear to me the judiciary was there to assist the govenment and there was no separation of powers.

86. After that case a similar case but now under the Peaceful Assembly Act 2012 came. It was *Nik Nazmi's* appeal. The coram was chaired by Dato' Mohamad Ariff Md Yusof, Dato' Mah Weng Kwai and myself. I brought to their attention my

previous case which was also cited by the parties to a section in the Act as unconstitutional. Dato Ariff directed each member to write a separate judgment in consequence of the constitutional importance of the issue. Each wrote separately and gave different reasons though we were unanimous in the decision to declare some parts of the Act as unconstitutional.

87. That judgment was a historical one in relation to peaceful assembly. Our decision was not appealable under the law. Nor can a Court of Appeal by a subsequent decision refuse to recognise the decision like in civil cases. This is so because of the protection given in Article 7 of the Federal Constitution. The importance of this decision was such the present government as the then opposition and also the NGO inclusive of the public had the opportunity to freely demonstrate peacefully on issues related to public interest. If not for the judgment the present government might not have won the election.

88. The top judges and sympathisers of government in the Federal Court were very stressful of the effect of the decision which can create an Arab spring position. They could not do much to save the position as there was no right of appeal from our decision since the appeal to us arose from a decision of the subordinate court. Top judges realised the threat of Court of Appeal judgments and they joined hands with Federal Court judges in another case in an unprecedented manner to suggest the that the Court of Appeal will not have jurisdiction to hear constitutional issues and they must be dealt with by the Federal Court.

89. In addition, ARLC subsequently came to sit in the Court of Appeal in a similar case like *Nik Nazmi's* appeal case to overrule the effect of our decision. That left two decisions, one in favour of the accused and the other in favour of the prosecution or more accurately the then government. Because of the said unconstitutional overruling, there arose an opportunity to charge important opposition members such that some of them were not able to stand in the election.

90. The net effect of *Nik Nazmi's* case made many of the Federal Court judges to have dislike for me and still continuing. The other two members of my coram, Dato' Mohamad Ariff Md Yusof and Dato' Mah Weng Kwai retired gracefully after also delivering the judgment in *Teoh Beng Hock* appeal which the top judges could not do anything about since the appeal had to end before us.

91. Hell turned loose when I delivered my dissenting judgment in *Indra Gandhi* appeal. My coram was called up by ARLC. As it was call by short notice, one lady judge of the coram was not able to make it. ARLC reprimanded me with words which impinged judicial independence and that is where he disclosed the unhappiness of top judges and Federal Court judges in respect of my important constitutional judgments.

92. He also threw tantrums on me in an uncivilised manner in front of the other panel member. His unconstitutional conduct has caused me great mental stress and still

continuing. Nevertheless I told the ARLC "I will not be cowed by him and I will continue to be beholden to my oath of office." ARLC was extremely upset.

93. The other member of the coram was very silent when I was reprimanded told me after leaving ARLC chambers, "what the 'F---K' he has to say about our judgment" and consoled me and took me to his chambers and offered me tea.

94. I had immediately informed the Bar President and many others of my reprimand and also informed the lady judge who could not make it of my reprimand. In fact the whole judiciary knew immediately as the reprimand ARLC gave me was on the eve of Judges' Conference and the news spread like wild fire as I was also contemplating leaving the judiciary, in consequence of the reprimand.

95. Many of the senior members of the Bar asked me not to take hasty decision and asked me to take it as a challenge and keep doing the good work and members of the Bar will be there to support if matters go out of hand.

96. My opportunity to take on the top judges for constitutional crime as well as judicial misconduct came only after the 14th general election even though for the last two or three decades I have taken the position that Intellectually Dishonest, Morally Corrupt, Judicially Incompetent persons cannot be appointed to uphold the rule of law. My commitment to the proposition is reflected in my paper published by Bar Council in the INSAF Article that I referred to earlier.

97. I was invited to speak on an area which I was extremely passionate at the International Malaysia Law Conference 2018. The title given was "Judiciary as The Principal Guardians of the Rule of Law". My paper at this conference shocked many as I exposed the scandalous conduct of judicial members and called for RCI.

98. As at the material time I already had the information of many of the constitutional misconduct of top judges as well as misconduct of judges in aiding and abetting them and / or being instrumental to organise a cartel of judicial rowdies judges to sit in the coram to assist the past government. I call it judicial rowdies judges. Some in the judiciary call it Hit Squad. This Hit Squads are not permanent coram. They will be pulled to execute the massacre of rule of law. Their judgments will speak the truth of judicial rowdies within the judiciary.

99. I had duly informed of all the wrong doings to all top members of the Bar including two of IRC members and lawyers like Haniff Khathri, SN Nair, etc. They simply did not give any solution to tackle the constitutional scandal. However, Haniff Khathri was bold enough to make the relevant statement in the press. Members of the Bar Council after my paper for the first time were bold enough to ask for RCI notwithstanding many Bar Council and ex-Bar Council members were aware of my information relating to misconduct as well as coram fixing and having no mixed coram to hear disputes of public interest very much earlier. I have a

practice of telling all of the shortcoming of the law and/or judges, etc. However, very few take it up to pursue the cause of justice.

100. For example, in *Anwar*'s case, the trial judge, the coram of Court of Appeal as well as Federal Court judges did not consist of non-Muslim judges. Except for two or three, they were all from same university or service. By any judicial standards the coram placement will never be considered by any civilised society to be fair taking into consideration Malaysia consists of mixed population. To put it simply, in my view, Anwar's fate was fixed by perceived judicial rowdies as well as political rowdies well in advance. By 'rowdies' here, I mean persons who breach the rule of law as stated in my paper published in the International Malaysia Law Conference 2018.

101. To put *Anwar's* case in jurisprudential terms, what was for the trial court as well as appeal court to consider was not whether Anwar committed any crime but whether the prosecution had proven the case beyond reasonable doubt. In *Anwar's* case the prosecution was not able to prove the case according to law and there was no fair trial offered to him. No fair trial means it is a mistrial and the case has to be dismissed *in limine*. This normal courtesy of fair trial issue was not given consideration by the Court of Appeal or apex court and it was just brushed aside. All the facts and circumstances taken into account, in addition to the 5 years' sentence, *Anwar's* case was in fact a judicial tragedy, which has brought shame to the integrity of our judicial process not only in Malaysia but globally.

102. The Court of Appeal and Federal Court dug for evidence to justify a conviction. It is a case of constitutional conspiracy to do so by judges who have taken sacrosanct oath of office. The top judges involved in *Anwar's* case were also involved in the conspiracy to continue in office after constitutional retirement age.

103. After the Bar Council asked for RCI based on my complaint, the Chief Justice who does not have a constitutional mandate to inquire wrote to me to ask me what happened under the cover 'SULIT'. I replied. After a few days of my reply while I was having a sitting in open court my secretary sent me a note that 2 judges wanted to see me urgently. These two were the coram members of *Indira Gandhi* case. I agreed to see them during lunch break at 1.30 p.m.

104. They came and they were in a state of agitation and were not in a friendly manner. They demanded in an interrogatory mode to know what was said by ARLC. I did not think it was proper for the judge who was in ARLC's chamber to ask me on that as he was a prime witness. The reprimand was unusual in our judicial history and judges of his status will not want to ignore or forget the incident. It is impossible to forget such an event more so of what he said immediately after the event, i.e. the 4-letter word. In addition, my statement of reprimand was flashed in all newspapers and if they were sincerely concerned they would have met me earlier.

105. I knew there was a high level drama going on to exert pressure on me to get some favourable answer from me to help ARLC who come from the same university as well as were instrumental for their promotion, etc. Notwithstanding that the male judge remained cool, though in agitated mood. The female judge went on an interrogatory mode as well as harassing mode, displaying judicial rowdyism at the highest and even accusing me of not being a good Muslim, etc. I will reserve to say further in RCI.

106. It was an extremely painful experience for me and the atmosphere was nearing a position of physical violence. I had to ask the lady judge to leave my chambers, though it was never my culture to tell anyone to do sore, more so to a fellow judge of the Court of Appeal. It is important to note I have never complained against any of these 2 coram members. Nor did they assert any interference when I wrote my dissenting judgment. In my view, the whole purpose of the drama was to help ARLC to see whether I will back off. All again from the same university getting into uncivilised behaviour as well as criminal intimidation of a complainant.

107. I was extremely upset over the incident and I wanted to immediately lodge a police report. I went to court for the continued sitting and informed the other two coram members of what happened. They were shocked. I told them I wanted to lodge a police report. They advise me not to do so. I had also informed all my friends of the incident as well as some members of the Bar Council, etc.

108. Many of my judgments on commercial matters which supported the government were scorned by top judges. The reason was that the private parties who were directly nominees of politicians created contracts with the government to defraud public funds. The apex court were perceived to be sympathetic to them. I will give an example. The government will enter into a contract with a political nominee with no intention of honouring it. Subsequently the government will terminate the contract and the nominee will sue the government for breach of contract. The government may record a consent judgment accepting liability and agreeing to assess damages. This *modus operandi* was going on directly to deprive the exchequer by false claims.

109. This *modus operandi* is not only illegal but also unconstitutional. To arrest these acts I developed the jurisprudence relating to fraud on the exchequer or entering into unfair terms agreement with government, which will make the contract unenforceable based on public policy grounds. This doctrine was developed and mentioned in a number of cases.

110. ARLC got upset with my jurisprudence as he was finding it difficult to help government nominees. He, in the presence of other judges publicly started to make fun of the concept and to belittle me and he wanted to raise this in a talk at the Palace of Justice and particularly to embarrass me. I came to know about it in advance through a registrar and to avoid that I arranged a meeting in a

Terengganu university to brief them of my concept related to University cum Court Annexed Arbitration.

111. In fact I was told ARLC was looking for me. The PCA then even went to ask a registrar to check whether I had in fact gone to Terengganu. That is to say they were targeting me. I must say the judgments were those of Court of Appeal where the relevant corams have unanimously agreed. However, I was singled out in an attempt to be shamed by ARLC, who did not have qualifications to match me or written books or judgments to match me, etc. His coming, annoying and irritating me with the support of his judicial rowdies group in the performance of my constitutional role is a grave misconduct.

112. It would have been perfectly alright if the matter had gone on appeal before his coram and if he had written a judgment disagreeing with my jurisprudence. However, it was misconduct on his part to belittle me. In this respect I must say there are many judges in the Federal Court who lack knowledge in constitutional principles.

113. When a contract relates to government and a private party, no advantage of any nature can be taken by the private party even though the government agencies in breach of rule of law might have consented. In short ordinary contractual principles in all corners will not apply. The court to protect public interest is obliged not to recognise such contracts even though it is in writing. It will also be a

sheer case of judicial incompetence to recognise purported contracts which has not been executed by the government within the rule of law. There are many instances I will say the Federal Counsel acting for the government was not able to place good arguments against some of the top lawyers in town appearing for private party. The lack of knowledge by apex judges largely consisting of single degree holders or those who have not been known for their involvement in law or had hardly written sufficient judgments to even enter the Federal Court are in most instances not able to protect public money. Whether such judges are doing in ignorance of the law or in consequence of judicial interference is a matter which the AG Chambers should revisit and take appropriate action to salvage the damage and loss of money to the public.

114. It is time AG Chambers looks at judgments where Federal or State Government or its agencies were ordered to pay money on government contracts and analyses whether it was correct in principle to do so. It will be prudent for AG Chambers to assign or employ at least on contract basis private practitioners of equal standing as those appearing for the private parties to make sure the exchequer is not short changed. Judgments against government for the benefit of private parties in the nature of nominees or the like must be revisited to rule out any form of corrupt practice in obtaining those judgments. I take cognisance as per my oath of office that there is a case to investigate for judicial scandal in such cases.

115. I have been made to understand my dissenting judgment in *Leap Modulation Sdn Bhd v Pcp Construction Sdn Bhd and another appeal* [2018] MLJU 772 was partly expunged by a 3-member panel at the Federal Court, that too at the stage of an intervention-leave application filed by AIAC (formally known as KLRCA) into the leave application made by the unsuccessful party at the Court of Appeal. That was done without hearing any right party in opposition and by making an order in the nature of consent judgment in a manner unprecedented in commonwealth jurisdictions. In addition my direction to my registrar to lodge a report to the IGP as well as to MACC was also expunged. A fundamental jurisprudence issue related to public law cannot be expunged but can only be overruled by apex court.

116. In addition a complaint which has already been made to the police and to MACC cannot be expunged at all. Further, the current Chief Justice had publicly stated that substantive matters on law will be heard by a 5 or 7 member panel, which was not followed in this case. It appears the whole expungement was done in breach of rule of law and in my view it has been orchestrated by many parties. This on its own needs an RCI as well as MACC investigation of corrupt practices.

117. I will now deal with *Leap Modulation* case and judicial interference by judges as well as third or related parties. Leap Modulation is a reported decision which relates to an appeal arising from an application under CIPAA 2012. It was my observation that constitutional safeguards to access to justice has been breached and the law has been enacted to benefit a foreign (i.e. not-local) institution by

providing statutory right to collect money from Malaysians without accountability transparency and good governance. As there were criminal elements involved since the constitutional framework has been violently breached the matter was referred to MACC and the police.

118. It was one of my best judgments in constitutional law which indirectly may have paved way for a director of the institution to be investigated and arrested. The judgment was widely read by international arbitration community. In fact a Malaysian lawyer cum Constitutional Expert Datuk Dominique Puthuchery after having read the judgment had sent me a text message to say it is one of the best judgments he had read in constitutional law.

119. There were many other jurists of International repute who have hailed the judgment. For example, a previous member of the Judicial Appointments Commission, namely Prof. Dr. Chong Yeow Choi, around the time the judgment was delivered sent me a note from a Queen's Counsel (U.K.), by WhatsApp which read as "Great judgment especially paras 9, 23(g) and 24."

120. I was informed by people in the arbitration industry that the director of KLRCA (now AIAC) was unhappy with my dissenting judgment relating to CIPAA 2012 in the case of *Martego Sdn Bhd v. Arkitek Meor & Chew Sdn Bhd & Another Appeal* [2018] 2 CLJ 163.

121. In addition in the case of *Asean Bintulu Fertilizer Sdn Bhd v. Wekajaya Sdn Bhd & Another Appeal* [2018] 2 CLJ 257 where the award written by the KLRCA (now AIAC) director in his personal capacity as arbitrator came under scrutiny. The complaint there was that he had taken 6 years to hear an arbitration case and thereafter 4 years (after submissions by parties) to write the award. Indeed I was shocked how a person of his conduct has survived in the industry and was a long term director of KLRCA (now AIAC) and how did the appointing authority of KLRCA (now AIAC) were not able to trace the shortcoming or arbitration practitioners have not blown the whistle. These by themselves warrant MACC to investigate corrupt practices if any in the institution orchestrated by Malaysians.

122. In fact the trial judge who heard the case without fear or favour had reprimanded him in his judgment. That reprimand itself was sufficient for him to resign as director of KLRCA (now AIAC) or the people who were involved in the affairs of KLRCA (now AIAC) to take action. That did not happen and it is not uncommon in Malaysia either, notwithstanding KLRCA (now AIAC) has been placed in the watchful eye of the AG. When it came on appeal I affirmed the decision of the High Court and set out some guidelines related to ethics of arbitrators and it read as follows in the judgment:

> [12] An arbitrator being a professional and having agreed to a fee for his engagement is contractually obliged to subscribe to the doctrine of good practice, such as independence, impartiality, accountability, transparency, good governance, etc. and very importantly intellectual honesty. Lack of intellectual honesty is the foundation to

corrupt practices which will be abhorrent to the rule of law and justice. An arbitrator who is not able to perform his engagement within the reasonable expectation of the parties, ought to disclose at the earliest opportunity, failing which it will impinge on the doctrine of good practice as well as ethics and can be a subject matter for parties to bring an action in contract as well as many areas of tort inclusive of tort of deceit.

123. Subsequently by the time I heard *Leap Modulation* case, by virtue of my judgments in the past, I could sense something wrong in the framework of KLRCA (now AIAC) as well as CIPAA 2012. I took some extra trouble to do research to see what was wrong and made my observations of constitutional breach in relation to access to justice. And I realised Constitutional crime has taken place.

124. The AG chambers then had knowingly or ignorantly recommended, through AA 2005 as well as CIPAA 2012, giving direct control to a foreign body to have a say in administration of justice. A model which can corrupt arbitration practice as well as CIPAA 2012 practice. Judges upon retirement may look for jobs through instruction from KLRCA (now AIAC). I also realised this when a coram member in *Leap Modulation* case was using extraordinary efforts to convince me to remove paragraphs which will be detrimental to KLRCA (now AIAC). This judge, who is now one of the top judges, came to my chambers to make certain suggestions which I will reserve to say at RCI. It was a clear case of judicial interference. As to what extent this judge would have been involved in the expungement of parts of my judgment need to be considered by RCI. I even discretely mentioned on the interference in my judgment as follows:

[11] (d) (d) Any attempt by any parties to silence the judge directly or indirectly in his views and/or in writing his judgments or in doing his duty will amount to judicial interference. Even any suggestions to tow the line of judges' policy of apex court by fellow judges will also amount to judicial interference. Thus, a judge has to stand with his views and write judgment within the confinements of judicial propriety. The judge takes an individual oath and not collective oath and in consequence is not obliged to subscribe to apex fallacy (if any). It is no easy task and in consequence public must ensure the best are appointed and also handsomely rewarded with appropriate pension scheme so that judges need not look towards post-retirement benefits from the Government and/or politicians. A weak judiciary will promote corruption and the net effect may lead to insolvency of the state and that will affect the ordinary public in particular the poor, needy as well as the oppressed the most. To arrest that at limine, prime investment must be made on judges as well as the supporting agencies.

125. After that conversation with the coram members the picture became clear and I took note that I was obliged under s.57 of Evidence Act 1950 as well as various provisions of the CPC to take cognisance of Constitutional crime and I referred it to MACC and police.

126. No judge has taken such an approach in the past in the manner I have done. Probably those judges or current judges have no jurisprudential strength in all areas of law as reflected in my CV. I am the only Malaysian judge who wrote a chapter on arbitration as early as 1995 and also a book on international arbitration in 2006 and widely invited to speak on arbitration in various countries. I had to

take the bold step to tie the bell on the cat, knowing the influence KLRCA (now AIAC) had on the judges as well as leading arbitration practitioners, ministers inclusive of retired Chief Justices who were simply mesmerised by KLRCA (now AIAC) for various reasons and consideration.

127. Nobody seemed to apply the common sense to think that KLRCA (now AIAC) could never lead in International Arbitration with Malaysia as a seat in the current circumstances. To be recognised as a preferred seat, the courts must be one of integrity as well as competence. Malaysia had lost that position in the last two or three decades in consequence of judicial scandals and still continuing. My judgment cannot demean KLRCA (now AIAC) but it will help to strengthen domestic arbitration as well as CIPAA in favour of the public.

128. KLRCA's main revenue comes because of statutory scandal impinging access to justice, particularly by virtue of CIPAA 2012 as well as domestic arbitration.

129. The point I am trying to make here is that KLRCA (now AIAC), a foreign organisation, was through sympathetic persons directly or indirectly started exerting its pressure on me by moving people to condemn me for my judgment. I was told by the President of the Bar that some lawyers were exerting pressure for some action against me. MACC as well as the AG Chambers should investigate this. It becomes questionable how a judge perform his constitutional duties as per oath of his office when there is pressure from top lawyers. I am also surprised that

after the arrest of the director of the KLRCA (now AIAC) there is no news of the status yet. I will reserve further information for RCI.

130. Around the same time my judgment was published I received a call from PCA to his chambers and was informed that he was about to leave the judiciary and he thanked me for the good work I am doing. He also informed me that he had just received a complaint letter from the director of KLRCA (AIAC). On the complaint letter, I said I was not obliged to defend my judgment. The conversation ended friendly and I thanked him and left.

131. During the period of current Chief Justice, my chambers received an anonymous letter related to KLRCA (AIAC) in which my dissenting judgment was mentioned. From the reading of the letter and the detailed particulars of name and evidence implicating the director of KLRCA (AIAC) as well as Ministers in the past and present plus some other names relating to purported criminal offence was indeed shocking for me.

132. My dissenting judgment was related to constitutionality and lack of proper mechanism of accountability, transparency and good governance in relation to a foreign body which has been allowed to interfere in the administration of justice in our country in breach of rule of law. It has nothing to do with corruption or any corrupt practice going on KLRCA (AIAC) itself as said in the anonymous letter.

133. I immediately requested my deputy registrar to inform the CJ through his registrar with a view that the CJ may direct a police report to be made. My deputy registrar informed me he had informed the CJ's registrar. I am not aware if any police report is made.

134. I take the view that whistle blowers' complaint must be taken cognisance of under CPC to direct investigation by MACC or police, particularly when the CJ was already aware of my judgment in *Leap Modulation*. If such a report was made, it would have helped to clear the name of the ministers who are relevant to law and have nexus to judicial institution. CJ's non-action, seemingly, undermines the integrity of administration of justice.

135. Subsequently I heard from lawyers here and outside the country that the anonymous letter has gone viral. This was told by a Queen's Counsel when I was in Jakarta recently upon an invitation from a university to speak on my concept known as University cum Court Annexed Arbitration. That anonymous letter without proper investigation by relevant authorities will not only destroy the credibility and integrity of ministers but also of administration of justice. This is so because, I understand, it comes under the watchful eye of the past and present AG.

136. I now understand that part of my judgment was expunged in breach of rule of law. The normal practice in courts is that when the Federal Court makes any decision

on the judgment of the Court of Appeal, the coram of the Court of Appeal will be informed. Till date I have not been informed and/or have seen the information-letter, more so it is unheard of in judicial history to expunge a judge's view on legal and constitutional issues in matters of public interest and also to expunge complaint by a judge to investigating authorities.

137. My judgment has nothing to do with private parties like *Metramac Corporation Sdn Bhd v. Fawziah Holdings Sdn Bhd; Tan Sri Halim Saad & Che Abdul Daim Hj Zainuddin (Interveners)* [2007] 4 CLJ 725 where the issues did not involve constitutional law. I take the expungement of my views on Constitution and law as a direct assault on me in performing my task as per my oath of office to preserve, protect and defend the constitution. No judge has a right to muzzle another judge on his views on constitution and rule of law save that the apex court has every right to overrule my reasoning by a judgment.

138. The point I am making is that the apex court has no business or jurisdiction to expunge my judgment on issues of public law. If this is taken as a precedent other judges will not want to deal with constitutional issues and breaches. It is incumbent on the Bar Council as well as the AG to set aside the expungment order sought by KLRCA (AIAC) and supported by an affidavit of the director of KLRCA (AIAC), who was immediately after the expungment order which was done quietly like an *ex parte* default order was arrested by MACC for investigation.

It is a shame for top judges appear to be giving a landing hand to the impoverished KLRCA (AIAC).

139. The conduct of the judiciary on leap modulation itself requires RCI with ex-judges from England to sit to see whether a judge's observation on public law can be expunged in the manner done by three judges of the Federal Court. Leap Modulation is a judgment where the Arbitration Community globally has taken note of.

CONCLUSION

140. In conclusion, I wish to say that to clean the image of the judiciary the judges themselves must welcome RCI to clear the name of good judges and the bad ones to be reprimanded. It is the constitutional duty of each and every judge to voice the grievance from time to time to protect the image of the judiciary. The judiciary being the supreme policing authority of the constitution must realise that the failure of them to act according to rule of law has been the main cause of the State nearly reaching insolvency. The fault is with the judiciary and not just with the politicians. All Malaysians must realise this. This is how our Constitution is framed.

141. Members of the judiciary will remember that I have voiced my concern at several judges' conferences that salary of judges were too low and subsequently my

voice was heard and salary was slightly increased and all the silent members are enjoying the benefit. The right to a salary is an obligation the public must be ready to meet, with the expectation that judges will protect their constitutional right.

142. At the same note the members of judiciary will know that I was the one who voiced to generate income by allocatur provision where top judges were negligent in implementing it as per rule of law. The allocatur has generated hundreds of millions of ringgit in revenue and, if properly administered, will yield multiple times more than the current income exceeding billion or so. The point I am making is that in one hand the judges are entitled to good salary and at the same they are constitutionally obliged to ensure public interest is protected in various ways safeguarding revenue and preventing loss of revenue inclusive of stopping thieving of public funds by dubious means by executives or nominees, etc.

143. It is also important for judges not to conspire to defeat the rule of law as perceived in cases of Anwar, Karpal, the present PM, etc. The perception itself is good enough to impinge on the administration of justice.

144. It must be noted that the judges themselves are the check and balance for judicial integrity as well as its competence. The failure of judges themselves to voice their concern on judicial misconduct and judicial scandal has destroyed the integrity of the administration of justice.

145. The current Chief Justice, who was appointed notwithstanding there were a lot of dissatisfaction from various quarters for many years, had no moral courage to clean the judiciary in the vigorous manner with which he attempted to clean the public toilets. It is time for the Chief Justice to accept responsibility to call for RCI before his retirement and allow the appointing authority to appoint a new Chief Justice who is not aligned to the previous Chief Justices or from the same university which I have complained earlier to give new hope to an impoverished judiciary.

146. It is also important to have RCI as soon as possible with a view to boot out the judicial rowdies in the judiciary in view of charges made against previous politicians cases coming up for judicial decision soon. If it is going to be heard or prosecuted from the members of the same university, it is unlikely to succeed as well previous politicians are directly or indirectly connected to the judges as well as public prosecutors.

147. One must understand that the underlying problem in the prosecutorial service as well as the judiciary is that the senior members come from the same university or service. This members are connected with the Alumni members and also obligated to them. Further these people in service have worked for the ministers and have been given lands, scholarship to them as well as families, etc. Thus past loyalty and other consideration may compromise the integrity of criminal process itself. The past politician having sufficient funds can easily infiltrate the

weak souls of the same university or service. The past members of the judiciary have great influence in the judiciary itself for various reasons.

148. The problem was so acute the then opposition who is now the ruling government wanted to give a clean judiciary but decided to continue with the same players with cosmetic changes only notwithstanding the Bar Council had twice asked for RCI.

149. Setting up the RCI is necessarily a must to ensure rule of law and arrest kleptocracy from continuing through patronage of judges. To ensure an efficient administration of justice the Federal Constitution must be amended to say all top position holders can only occupy the administrative position for once in life time for two consecutive years only and top positions must be held by members from mixed universities. This will destroy the greed of seeking favours from politicians to extent the serving age to 70 years and also give Malaysia the opportunity of giving vibrant CJs PCAs, CJMs and CJSSs eradicating and booting out the dead woods who have no passion for the law or competency in law at the earliest opportunity, and all were appointed by default (by seniority) and not merit. Meritocracy must be the selection process for top positions. Head hunting for the best and honest is a most important criteria to ensure a judiciary of integrity as well as competence. Single degree holders should be shun away from the top positions.

150. I have given much thought to the contents of this affidavit which in historical terms will stand as a class by its own to stand against the judiciary as 'lonely voice' by a sitting judge. I hope and pray that the other right thinking members of the judiciary will sincerely join hands to clean the judiciary to save Malaysia from kleptocracy as well as judicial rowdyism. I consider this '*JIHAD*' (meaning striving or struggling, especially with a praiseworthy aim) within my religious principle and obligation to act as per my oath of office under the Federal Constitution. The draft affidavit was prepared while I was performing my *Umrah* in an exclusive place of pursuit and dissemination of knowledge in the Grand Mosque, Mecca praying sincerely this affidavit will help all Malaysian to clean the judiciary through a process of RCI and subsequent tribunalisation of the judges for the constitutional crime as well as judicial misconduct.

151. I am of the view in granting the Applicant's prayers partly or wholly a recommendation by this Honourable Court to call for RCI will be most appropriate solution to address the perceived judicial scandal as well to uphold the integrity of judges as well as rule of law.

152. I execute this affidavit without fear or favour as per my constitutional oath to preserve, protect and defend the Constitution.

To an affidavit by one deponent }
Hamid Sultan Bin Abu Backer }
(NRIC No. 550828-71-5003) }
affirmed on the 14 FEB 2019 }
At AMPANG SELANGOR }

Hamid Sultan Bin Abu Backer

Before me

B 546
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PESURUHJAYA SUMPAH
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