



## Counter-Terrorism in Malaysia: Religious Right and Constitutional Provisions

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Religion plays an important role in people's lives. It governs the relationship between people and their Creator, regulates their behaviour, aids in the formation of a proper society, feeds the soul, and brings about peace. This makes it nearly impossible to separate man from his religious right. However, some extremist groups tend to violate religious sanctity by using religious texts to further their own interests and agenda. As a result, chaos and subversion prevailed, and security was jeopardized.

### Freedom and Extremism

To confront and eradicate religious extremism, all available means had to be used. Much of the world, including Malaysia, is plagued by religious terrorism and extremism, which has manifested itself in violent acts in Malaysia and most of Southeast Asia, followed by the arrests of ISIS and other affiliate terrorist group members. This prompted the Malaysian government to implement a number of counter-terrorism measures in order to ensure the safety and security of the country and its people. However, challenges to the constitution, international laws, and human rights have emerged. These necessitate striking a balance between maintaining security and stability and safeguarding human rights and liberties.

The right to profess and exercise one's religion is guaranteed by Article 11 of the Malaysian Constitution. According to Article 3, Islam is the official religion of the Federation, but other faiths are permitted to be practised in all areas of the Federation in the spirit of peace and cooperation. Those rights that have limitations and rules yet in the meanwhile they must be respected and protected by the government. They are subject to the law of public order, public health and social ethics.

The government has the power to pass laws to counter the spread of extremist ideology. Article 149 of the Malaysian Constitution grants the Malaysian parliament the power to approve measures required to combat violent extremism. As a result, the Supreme Court issued a warning against using the right to freedom of religion and worship as a

cover for engaging in criminal activity or committing crimes motivated by extremism and endangering national security. The court further noted that Clause (5) of Article 11 of the Constitution assertively emphasizes that the provision for religious freedom in that article does not permit acts that are detrimental to morality or public order .

## Counter-Terrorism Laws

Malaysia passed a set of counter-terrorism laws classified into two categories :

**First, Ordinary Laws.** These refer to legislations passed by the federal legislature and state legislatures under their respective constitutional powers. These laws must be consistent with other provisions of the constitution, particularly the ones that deal with fundamental liberties. The Supreme Court is entitled to annul any law had it not complied with the constitution or had it violated any civil rights guaranteed by the constitution. This category includes the AML/CFT Law, the Proceeds of Unlawful Activities 2001, the Special Measures Against Terrorism in Foreign Countries 2015, and the Penal Code.

Malaysia enforced the Penal Code, namely Chapter VIA on offences relating to terrorism, in cases of religious extremism handled recently by the court. The chapter can be divided into two parts: firstly, provisions on the suppression of terrorist acts and denouncing any support for terrorist acts, which consist of section 130 B to section 130 M, and secondly provisions on the suppression of financing of terrorist acts from section 130 N to section 130 TA.

**Second, Special Laws,** which are laws passed by the parliament in accordance with Article 149 of the constitution and which deal with organized subversion, violence, and crimes against people. The parliament is empowered to pass special laws under the terms of this article, including those that prohibit acts that terrorize Malaysian citizens inside or outside the Federation, as well as organized violence against individuals, groups, or public or private property, incitement of racial or class hatred, the destruction of public services, or any behaviour endangering public order .

Any provision of the law made in pursuance of Article 149 is valid even if inconsistent with the constitutional rights of life and personal liberty, freedom of movement, rights to free speech, freedom of assembly, freedom of establishing associations, and property rights. Legislations passed under the constitutional provision to combat subversion and organized violence include Prevention of Crime Act 1959, Internal

Security Act 1960, Security Offences (Special Measures) Act 2012, and Prevention of Terrorism Act 2015.

## Types of Crime

The offences under the aforementioned counter-terrorism laws can be divided into ideological offences and criminal offences. **Ideological offences** are offences committed by individuals or groups based on ideological beliefs. These offences may not necessarily cause physical harm to the public. These include the possession of anything that can be used in extremist and terrorist acts, such as pictures, videos, audio, symbols, flags, books and publications, promotional material supporting extremist ideology on social media, or asking for donations. Although an ideological offence is not violent in itself, it potentially leads to extremism, terrorism, and violence. Thus, these offences have been classified as 'terrorist offences' in the Penal Code .

**Criminal Offences** are offences that inflict physical harm on the public or on individuals. Under current laws, there is no clear distinction between ideological and criminal offences. Thus, they should be approached from a different perspective. In addition, perpetrators of ideological offences should not be subjected to similar treatment or punishment as perpetrators of criminal offences. Imposing severe punishment for ideological offences can have detrimental consequences in the long run. Rather than punitive or vindictive, the sentence for ideological offences should be restorative and rehabilitative.

## Judicial Rulings

One of the roles of the court is to safeguard the legitimate rights of citizens, and to determine the legality of restrictions imposed on them by laws and government action. As part of the check and balance mechanism under the constitutional framework of the state, the court is obligated to protect the rights of detainees and suspects in offences related to extremism and terrorism. The court has the power to nullify laws that violate rights and liberties enshrined in the constitution, and to declare any action or decision made by the government illegal and unconstitutional in case it violates the rights of individuals .

In this regard, the court has taken on numerous cases, such as Ahmed Yani bin Ismail's complaint against the Inspector General of Police, in which several members of Jamaah Islamiyah (JI), a terrorist group active in South-East Asia, attempted to create unrest as well as overthrow the legitimate government through armed insurgency in order to

create an Islamic archipelago consisting of Malaysia, Indonesia, and the Southern Philippines, and were detained by the authorities. JI members were discovered to have received military training. The court ruled that their malicious actions did not fall under religious freedom and thus were not protected under Article 11 of the Malaysian Constitution.

Because these actions threatened the country's stability, the court ruled that detaining that group was legal and did not violate religious freedom. Detainees who were also JI members were arrested for armed and violent acts in another lawsuit filed by Abdul Razak bin Baharudin & Ors v Ketua Polis Negara & Ors. They did, however, object to their arrest, claiming that it violated their legally guaranteed freedom of religion. However, after a thorough examination of all relevant facts, the court was unconvinced by their claims and upheld the authorities' decision that the detainees' actions were detrimental to the country's security and must be combated. These cases demonstrate that acts of militant religious groups must not be considered within the religious right guaranteed to citizens, or protected by the Constitution.

## Summary

Malaysia is making significant efforts to combat extremism, track down extremists and terrorists, and undermine and counteract their activities. Despite the severity of the measures that are frequently imposed, the extremist ideology that underpins terrorism stays unchanged and is rapidly growing. As a result, the state is determined to eliminate all causes and factors that fuel extremist ideologies and their negative consequences.

Malaysia has implemented a comprehensive strategic plan to combat extremism and terrorism, which includes both strict and lenient measures. However, the ever-increasing threat posed by religious extremists and terrorist groups necessitates increased efforts by law enforcement authorities to protect society and the nation. At the same time, authorities must be more vigilant and tolerant in dealing with cases of ideological offences so that the lawful exercise of rights to free speech and expression, as well as legitimate religious rights, is not hampered. Innocent people who unknowingly fall into the clutches of a terrorist organization must also be assisted rather than punished. Finally, law enforcement forces and religious authorities should continue to collaborate to defeat terrorism and extremist ideology.