

Rule of Law in Malaysia: Judicial Lenses and Executive Myopia

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Abstract

The rule of law according to Lon Fuller focusses on the 'morality of the law'. Thus, a government must seek to provide an environment in which each citizen may realize to his or her maximum potential the rational plan of life to which he or she aspires. Society must be free and directed to the good of each of its members. Any government which fails, in a material degree, to meet these requirements may fail to deserve the label of a 'legal system'. The term rule of law, however, has been a term used by politicians to secure political mileage during election campaign periods and continues to be used upon formation of a new government. In Tun Mahathir's inaugural speech to his 'rakyat' on 10 May 2018, the term 'rule of law' was used at least 3 times. Within the domestic sphere, the Federal Constitution of Malaysia provides through Article 8 that all persons are equal before the law and entitled to the equal protection of the law. The terminology used is 'all persons' and not 'all citizens' which seems to uphold the Diceyan postulate of equality before the law. Regardless of its transcendent nature and noble assurance of a government of laws and not men, there would be gaps in the usage of the term 'rule of law' as it does not reach all levels of community. This paper critically appraises the concept of rule of law in Malaysia as it was and how it seems to be evolving under the current constitutional post-pandemic landscape.

Keywords: rule of law, equality

1. Introduction

Rule of Law is a prosaic concept that has withstood the test of time. All institutions of government use the term frequently to reassure citizens that democracy prevails within the State and citizens are ruled by 'law' and not 'men'. In fact, in Tun Mahathir's inaugural speech to his 'rakyat' on 10 May 2018, the term 'rule of law' was used at least 3 times.¹⁹⁴ The question arises as to what the domestic understanding of the rule of law is, and is it in line with the international perspective? The Pakatan Harapan government was on a

¹⁹⁴ Berita Viral, 'Breaking News! - Tun Dr. Mahathir Press Conference - 12:30PM - 10/5/2018' (*Youtube*, 10 May 2018) <<https://www.youtube.com/watch?v=ONfNj-5dbz8>> accessed 9 February 2021.

toboggan ride of turning political manifesto into policy. In this arduous process, the question remains as to whether the rule of law is adequately safeguarded within the State.

This paper uses two perspectives to gauge the notion of the rule of law today:

- (i) the thick perspective and ponderous incorporation of international law, and
- (ii) how the rule of law is reflected in society.

For the first part, actions of the executive are juxtaposed with interpretations from the judiciary. For the latter analysis, the Federal Constitution is evaluated to determine human rights application in the State, paying particular attention to the right to education.

2. International and Domestic Perspectives of the Rule of Law

Commentators view rule of law differently depending on politics, philosophy, period of time and spectrum of law. Within the international system of law, a thick understanding of the rule of law is observed. This thick understanding of the rule of law focuses on the individual and incorporates first and second generation rights. Waldron's view is that 'rule of law in the international sphere is primarily focused on the individual. Given that the UN understanding of rule of law embraces human rights, it must incorporate all individuals within the jurisdiction and territory of the State, regardless of nationality or even lack thereof'.¹⁹⁵ The thick understanding of the rule of law does not distinguish between the citizen and non-citizen as it promotes inclusiveness. Referring to the United Nations (UN) Sustainable Development Goals, SDG 16 contains the target of 'promoting the rule of law at the national and international levels and ensuring equal access to justice for all'.¹⁹⁶ A circular definition emerges whereby the rule of law is part of inclusivity and inclusivity has the rule of law as its target.

A State that truly encapsulates the international law perception of the rule of law would be party to the international laws governing rights and inclusivity. Primary treaties governing rights would be the International Covenant on Civil and Political Rights 1966¹⁹⁷ and the International Covenant on Economic Social and Cultural Rights¹⁹⁸ whereas the ones potentially governing inclusivity includes the Convention relating to the Status of Stateless

¹⁹⁵ Jeremy Waldron, 'Are Sovereigns Entitled to the Benefit of the International Rule of Law?' (2011) 22 *European Journal of International Law* 315, 325.

¹⁹⁶ UN General Assembly, 'Transforming our world: the 2030 Agenda for Sustainable Development' A/RES/70/1 (21 October 2015) <<https://www.refworld.org/docid/57b6e3e44.html>> accessed 8 February 2021.

¹⁹⁷ International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR).

¹⁹⁸ International Covenant on Economic Social and Cultural Rights (adopted 16 December 1966, entered into force on 3 January 1976) 999 UNTS 993 (ICESCR).

Persons 1954¹⁹⁹ and the Convention relating to the Status of the Refugee 1951²⁰⁰ amongst others. The standard therefore is rather high and only currently applicable to developed nations. Commentators such as Lon Fuller subscribe to this all-embracing view. Fuller was of the view that a government must seek to provide an environment in which each citizen may realize to his or her maximum potential and the rational plan of life to which he or she aspires. Society must be free and directed to the good of each of its members.²⁰¹ The focus of the thick perception of rule of law is the development of the individual and not the collection of individuals.

The thin perspective of the rule of law, on the other hand, looks at form rather than substance. Whilst international law favours the thick perception of the rule of law, a number of developing States' political activities seem to lean towards the thin perspective. Malaysia is no exception to this rule. Here lies the dichotomy within the States. The States may use particular ornate rhetoric of the thick perspective and yet operationalise the thin perspective of the rule of law. According to the Clingendael Conflict Research Unit (CRU) report on Rule of Law in Fragile Societies, 'a false impression of consensus prevails in the international discourse on what the rule of law amounts to and how it should be implemented'.²⁰²

Political rhetoric on the rule of law may be a gloss over the actual happenings within the State. Three institutions are responsible for upholding the rule of law. The 'bulwark of the rule of law'²⁰³ would be the judiciary. Although the executive may have the yoke of operationalising and serving as the spokesperson for the State, nonetheless it is the judiciary that serves as the 'guardian of constitutional rights';²⁰⁴ 'custodian of the rule of law';²⁰⁵ 'central pillar of a democratic state';²⁰⁶ 'protectors of dignity of man'.²⁰⁷ Based on the Westminsterian system of government, the legislative, on the other hand, work in-line with the executive to allow for the operationalization of the rule of law via legislation bearing in mind that ultimately it is the courts that decide on the validity of the law based on the *grundnorm* of supremacy of the Constitution.²⁰⁸

¹⁹⁹ Convention Relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 6 June 1960) 360 UNTS 117 (Stateless Persons Convention).

²⁰⁰ Convention Relating to the Status of Refugees (adopted 28 July 1951, entered into force 22 April 1954) 189 UNTS 150 (Refugees Convention).

²⁰¹ Lon Fuller, *The Morality of Law* (Yale University Press 1964).

²⁰² CRU Rep June 2017, 48.

²⁰³ *Alma Nudo Atenza v PP* [2019] 4 MLJ 1, 31.

²⁰⁴ *Hock Huat Chan Sdn Bhd v Assan bin Mohammad & Ors* [2008] MLJU 92, 102.

²⁰⁵ *Leap Modulation Sdn Bhd v PCP Construction Sdn Bhd* [2018] MLJU 772, 11.

²⁰⁶ *National Union of Bank Employees v Director General of Trade Union* [2013] MLJU 1567, 11.

²⁰⁷ *Nik Noorhafizi bin Nik Ibrahim v PP* [2013] 6 MLJ 660, 701.

²⁰⁸ Federal Constitution of Malaysia, Article 4.

Due to the fact that the public focus tends to be the executive rather than the progress within the judicial branch, it is no wonder that some commentators view rule of law as 'meaningless thanks to ideological abuse and general over-use'.²⁰⁹ If the focus were specifically on the judiciary rather than the executive, there would be more credence in the authenticity of the rule of law. This, however, needs to be done with the presumption that the institutions of government work as an integrated whole.

3. Methodology of Research - Theories and Methods of Analysis

Two theories are relied on in this analysis. The first being the theory of coordination which is used in the international sphere but also applies in the domestic sphere, and the second is the gradualist approach to international law. The theory of coordination apposite to international law envisages that in order for international law to apply effectively, States would have to work in a coordinated rather than confrontational manner. When it comes to abstract constitutional law concepts such as the rule of law, the theory of coordination is cascaded down to the three institutions of government. The rule of law operates well when the decisions of the judiciary propel the executive to work in tandem with the former. On the other hand, the gradualist approach refers to the gradual incorporation of international law within the municipal system of law. As a dualist state, a treaty would have to be transformed in order to apply within the State. Rather than having one document which incorporates all the treaty provisions, Malaysia tends to gradually bring in international law through progressive enactments of statute law. Tracking compliance with international law becomes arduous as it requires continuous observation of legal development.

Two methods of analysis are employed. In order to determine the development of the rule of law within the lenses of the judiciary, a content analysis of cases that have referred to the rule of law is conducted. This is followed by the case study method to determine how the rule of law is reflected in society. The methods are confined to the doctrinal paradigm of research. Cases from 1998 to 2019 that discuss the rule of law have been analysed. Furthermore, cases from all levels of the higher courts are referred to in this analysis.

The gradualist approach applies to both the broad understanding of the rule and incorporation of international law. Case law tends not to steer away from the Diceyan postulates of the rule of law - no man can be punished unless there is a clear breach of law; equality before the law; rights are safeguarded by the common law of the land. The Court of Appeal decision of *Marathaei d/o Sangulullai v Syarikat JG Containers (M) Sdn Bhd*²¹⁰ repeatedly refers to Dicey when referring to the rule of law. In *Kerajaan Malaysia v Mat Suhaimi bin Shafiei*,²¹¹ the Federal Court uses the Diceyan rule to elaborate that freedom is

²⁰⁹ *Alma Nudo Atenza* (n 203), 34.

²¹⁰ [2003] 2 MLJ 337.

²¹¹ [2018] MLJU 32.

not absolute but under the law. In *Nik Noorhafizi bin Nik Ibrahim v PP*,²¹² the Court of Appeal confirmed that ‘the equality doctrine, in reality, is drawn from Dicey's Rule of Law, one of the pillars of which is that persons are equal before the law’. Hence, the link is established between Dicey’s second postulate and Article 8 of the Federal Constitution of Malaysia. This link has been referred to even earlier in the case of *Sivarasa Rasiah v Badan Peguam*.²¹³ Apart from the Diceyan rule of law however, the movement towards a rather contextualized notion of the rule of law is observed. Looking at *Sivarasa* once again, the case refers to ‘a system of law that encompasses the procedural and substantive dimensions of the rule of law’. The case of *Lee Kwan Woh v PP*²¹⁴ confirmed that ‘it is settled law that the rule of law has both procedural and substantive dimensions’. Although the *Marathaei d/o Sangulullai v Syarikat JG Containers (M) Sdn Bhd*²¹⁵ case uses Dicey as the foundational rule it is also acknowledged that, “It is now well settled that at common law, both procedural and substantive fairness may be read into a statute on the basis that Parliament is presumed to have legislated in accordance with ROL.”

The most recent case that indicates the expansion of the rule of law would be *Alma Nudo Atenza v PP*.²¹⁶ It is acknowledged that it is ‘opportune’ and ‘necessary’ for us to now outline what is generally meant by the Rule of Law lest it becomes meaningless due to overuse and abuse. The case provides that, “While the precise procedural and substantive content of the rule of law remains the subject of much academic debate, there is a broad acceptance of the principles above as the minimum requirements of the rule of law.”

Critical evaluation of the progressive development of the rule of law informs us of two distinct features:

- (i) there is consistent usage of the Diceyan postulates in Malaysia, with the focus towards Articles 5 and 8 of the Federal Constitution, and
- (ii) the broader perspective of the rule of law, however, is not consistently referred to.

To opine that with the new executive fiat comes a broader understanding of the rule of law is remote. Federal Court judgements are progressing towards a broad interpretation of the rule of law albeit inconsistently. Judicial interpretation falls in between the thin and thick perspectives given to us via international law. In terms of parallel movement, the judiciary moves at a faster pace compared to the executive. This is specifically seen within the context of the reception of international law into the State.

²¹² [2013] 6 MLJ 660.

²¹³ [2010] 2 MLJ 333.

²¹⁴ [2009] 5 MLJ 301.

²¹⁵ *Marathaei* (n 210).

²¹⁶ [2019] 4 MLJ 1.

The two U-turns in acceding to pertinent human rights treaties such as The Rome Statute of the International Criminal Court²¹⁷ and the International Convention on the Elimination of All Forms of Racial Discrimination²¹⁸ at first glance demonstrates an outright rejection of the thick perspective of the rule of law. This can also be perceived as a clear rejection of the broader notion of the rule of law as employed by the judiciary. Upon careful scrutiny, however, it is also observed that the Diceyan postulates that are consistently referred to by the judicial arm of government do not call for the incorporation of international law perspective. It is Lord Bingham's principles on the rule of law which looks upon international law as the eighth principle and refers to compliance with international obligations and not accession to it. It is possible therefore to theorize that although not operating at the same speed in their understanding and application of the rule of law, the executive is not necessarily lagging too far behind the judiciary in its application of the rule.²¹⁹

4. Judicial Reception of International Law

Observing the reception and application of international law within Malaysia, the cautious approach once employed by the judiciary is slowly moving towards the gradualist approach. Different dualist States employ different methods of giving effect to treaty obligations. Either the treaty itself is enacted and has a full legal effect within the State to the extent of its enactment,²²⁰ or the treaty remains unenacted. Thio notes that in the field of human rights law, governments such as Singapore have not seen fit to adopt specific enabling legislation. However, amendments to existing law may take place after accession to the treaty.²²¹ This gradualist approach is employed in Malaysia as well.

As with other Commonwealth jurisdictions, the Malaysian courts have attempted to construe the Federal Constitution in a broad-based manner. In the case of *Dewan Undangan Negeri Kelantan & Anor v Nordin bin Salleh & Anor*,²²² Supreme Court Judge Edgar Joseph Junior enunciated as follows, "In construing constitutional documents it is axiomatic that the highest of motives and best of intentions are not enough to displace constitutional obstacles. Whenever legally permissible the presumption must be to incline the scales of justice on the side of the fundamental rights guaranteed by the Constitution, enjoying as they do, precedence and primacy ...".²²³

²¹⁷ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 90 (RSICC).

²¹⁸ International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (ICERD).

²¹⁹ Lord Thomas Henry Bingham, *The Rule of Law* (Penguin, 2011).

²²⁰ For example in the UK, the Diplomatic Privileges Act 1964 enacts the Vienna Convention on Diplomatic Relations 1961.

²²¹ Li-ann Thio, 'Reception and Resistance: Globalisation, International Law and the Singapore Constitution' (2009) 4 National Taiwan University Law Review 335, 351.

²²² [1992] 1 MLJ 697.

²²³ *Ibid*, 701.

In the case of *Adong bin Kuwau & Others v Kerajaan Negeri Johor and Anor*,²²⁴ a wide interpretation was given to proprietary rights under Article 13 of the Federal Constitution to include aboriginal peoples' rights both under common as well as statutory law. The Court of Appeal in the case of *Sagong Bin Tasi v Kerajaan Negeri Selangor*²²⁵ confirmed that the liberal interpretation of statute law is needed in order to give full effect to Article 8(5)(c) of the Federal Constitution, which sanctions positive discrimination in favour of the Orang Asli.²²⁶ In the case of *Sagong*, Section 12 of the Aboriginal Peoples Act 1954, concerning the acquisition of aboriginal land, was interpreted in an extraordinary manner so as to leave no room for the State authority to exercise discretion when granting compensation to the Orang Asli.²²⁷ In the case of *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors*, the term 'deprivation of life' under Article 5(1) of the Federal Constitution included the right to livelihood within the interpretation of the word 'life'.²²⁸ Deprivation of a clean environment results in deprivation of livelihood which in turn results in deprivation of life.

In the case of *Noorfadillabinti Ahmad Saikin v Chayed bin Basirun and Ors*²²⁹, Justice Zaleha Yusof took the bold step of using CEDAW to give effect to the provisions of the Federal Constitution by stating the following, "In interpreting art 8(2) of the Federal Constitution, it is the court's duty to take into account the government commitment and obligation at international level especially under an international convention, like CEDAW, to which Malaysia is a party. The court has no choice but to refer to CEDAW in clarifying the term 'equality' and gender discrimination under art 8(2) of the Federal Constitution."²³⁰ Judicial interpretation techniques are employed in order to safeguard the rights of persons in Malaysia.

There have been positive developments in terms of incorporation of international law within the Malaysian domestic system. Malaysian courts are able to apply common law as it was applied in the United Kingdom on the 7th of April 1956.²³¹ The common law of today, which incorporates human rights and includes the provisions of the European Convention on Human Rights, however, only has persuasive weight. Nevertheless, from the case of *Majlis Perbandaran Ampang Jaya v Steven Phao Cheng Loon & Ors*,²³² it is made clear that updated common law may be applied by Malaysian Courts. This allows for international law to be incorporated through common law.

²²⁴ [1997] 1 MLJ 418, 433.

²²⁵ [2005] 6 MLJ 289.

²²⁶ *Ibid*, 311.

²²⁷ [2005] 6 MLJ 289, 310.

²²⁸ [1997] 3 MLJ 23, p 43; *Tan Tek Seng v Suruhanjaya Perkhidmatan Pendidikan* [1996] 1 MLJ 261; *Lembaga Tatatertib Perkhidmatan Awam v Utra Badi* [2000] 3 MLJ 281; *Nor Anak Nyawai v Bornow Pulp* [2001] 6 MLJ 241.

²²⁹ [2012] 1 MLJ 832.

²³⁰ *Ibid*, 843.

²³¹ Section 3(1)(a) of the Civil Law Act 1956.

²³² [2006] 2 MLJ 389.

However, when it comes to the application of international human rights laws such as the Universal Declaration of Human Rights (UDHR), the Malaysian courts tend to be more cautious in their approach. In the case of *Merdeka University Bhd v Government of Malaysia*,²³³ a petition to the *Yang di Pertuan Agong*²³⁴ for an incorporation order for Merdeka University was rejected. The plaintiff issued a writ asking for a declaration that the rejection of petition was in contravention to the Federal Constitution; and that the refusal to establish a university was an unreasonable and improper exercise of the discretion conferred by Section 6 of the Universities and University Colleges Act 1971. Justice Eusoffe Abdoolcader referred to the judgment of *Lim Cho Hock v Government of the State of Perak & Ors*²³⁵ and stated that, “ ... the court’s power to make declarations is confined to matters justiciable in the courts and limited to legal and equitable rights and does not extend to moral, social or political matters.”

In the case of *Mohamed Ezam bin Mohd Noor v Ketua Polis Negara*,²³⁶ where an appeal against the decision of the High Court judge who refused to grant writs of habeas corpus, Federal Court Judge Siti Norma Yakob stated that international standards established by the UDHR and other UN documents were not legally binding on the Malaysian government. As a result, the Court was not obliged or compelled to adhere to the 1948 Declaration. The aforementioned cases demonstrate that the UDHR is not part of Malaysian law. In the case of *Nor Anak Nyawai v Borneo Pulp Plantation*,²³⁷ the UN Declaration on the Human Rights of Indigenous Peoples was cited by Justice Ian Chin not as part of the decision since it was not the law of the land, but rather invoked for educational purposes. However, these decisions do not imply a complete rejection of human rights law. What these cases do indicate is that the Malaysian courts do not give cognizance to soft law and customary international law. Hence, it is not international human rights law that is rejected, but the status of the document which holds the human rights provisions. More recent judgements have seen the use of international conventions as a guide to understanding certain concepts. In the case of *Lim Jen Hsian & Anor v Ketua Pengarah Jabatan Pendaftaran Negara & Ors*,²³⁸ the definition of who a stateless person is was determined through examination of the Convention Relating to the Status of Stateless Persons 1954.²³⁹ Again in the case of *Madhuvita Janjara Augustin v Augustin a/l Lourdsamy & Ors*,²⁴⁰ there was mention of the same Convention through the examination of the common law. Whilst the executive tap dances on the molasses of international law application within the States, the judicial arm goes a step further to refer to unincorporated treaties as a guide in decision making.

²³³ [1981] 2 MLJ 356, 366.

²³⁴ His Majesty the King of the Federation of Malaysia.

²³⁵ [1980] 2 MLJ 148, 153.

²³⁶ [2002] 4 MLJ 449.

²³⁷ [2001] 6 MLJ 241, 297.

²³⁸ [2017] 8 MLJ 122.

²³⁹ Convention Relating to the Status of Stateless Persons (adopted 28 September 1954, entered into force 26 April 1954) 360 UNTS 117 (CSSP).

²⁴⁰ [2018] 1 MLJ 307.

5. Who is Responsible and Accountable in Upholding the Rule of Law in Malaysia?

Needless to say, the rule of law is not merely a utopian principle but an ideal notion any democracy strives for. The survival of the rule of law in a sovereign independent country depends upon the responsibility and accountability vested in the pillars as well as the people of the nation to uphold the quintessential doctrine. Joseph Raz elucidates that the *grundnorm* of the rule of law is that society should be ruled and guided by the law but not men.²⁴¹ Impliedly, it does allude that the obedience of the people towards the law is the cornerstone of the axiom.

Significantly it affirms that to uphold the rule of law in a community, all actions must have a foundation in law and be authorised by law.²⁴² Such a proposition formulates an imperative question which should be answered affirmatively: who is responsible and accountable in protecting, preserving and defending an effective system of checks and balances which is necessary to guarantee that the country is ruled by the rule of law and not by rule by law?²⁴³ As this chapter centres on the practice of the rule of law in Malaysia, the proposed question will be answered within the Malaysian landscape.

Before delving into the mechanism of the state machinery, the distinction between responsibility and accountability must be briefly explained. Simply put, the vital difference between both aspects is that responsibility can be shared while accountability cannot. Responsibility is understood as an obligation to do the right thing but accountability is discerned as being answerable to provide a public account.²⁴⁴ In Malaysia, such distinction is indispensable as the responsibility to uphold the rule of law is shared by all members of the Malaysian society but the accountability to sustain the existence of the axiom as the bedrock of the nation rests upon the judiciary of the democratic State.²⁴⁵

Dr. Harold Crouch expounds that Malaysia is a nation 'whose significant democratic and authoritarian characteristics are inextricably mixed'²⁴⁶ but concurrently it is trite law that the Malaysian Constitution is the highest law of the land and it is declared that no lawmaker within the shores of Malaysia has the authority to make law which contravenes the Federal

²⁴¹ Joseph Raz, 'The Rule of Law and Its Virtue' (1977) 93 LQR 195, 197.

²⁴² *Ibid*, 196.

²⁴³ Albert Venn Dicey, *An Introduction to the Study of the Law of the Constitution* (ECS Wade ed, 10th edn, Macmillan 1959) 202.

²⁴⁴ Angela Marie Smith, 'Attributability, Answerability, and Accountability: In Defense of a Unified Account' (2012) 122 *Ethics* 575, 587.

²⁴⁵ *National Union of Bank Employees v Director-General of Trade Union* [2013] MLJU 1567.

²⁴⁶ Hoong Phun Lee, 'Competing Conceptions of the Rule of Law in Malaysia' in Randall Peerenboom (ed), *Asian Discourses of Rule of Law: Theories and Implementation of Rule of Law in Twelve Asian Countries, France and the US* (Routledge 2004) 244.

Constitution.²⁴⁷ To answer the above-mentioned principle question, it is fundamental to understand who is responsible for complying towards the constitutional provisions and who is accountable in guarding the supremacy of the Constitution.

Under the Malaysian frame of reference, the Federal Constitution is captured as an image reflecting the notion of rule of law. In regards to the responsibility of preserving the rule of law, it is a shared responsibility among all three pillars of the Constitution as well as pre-eminently the people of the nation. Unfortunately, legal scholars do acknowledge that the foundational principle 'seems so obscure and out of touch' with the reality of the layman.²⁴⁸

As adduced earlier, the conceptual vision of the rule of law can only be transformed into reality if the law to be obeyed by the common citizen is capable of guiding the behaviour of its subjects.²⁴⁹ Even though legal supremacy rests on the Malaysian Constitution,²⁵⁰ political supremacy is vested with the people of Malaysia. As Malaysia is a great champion of electoral democracy,²⁵¹ Malaysians are participants of rule of law in Malaysia and share the responsibility of upholding it.

The liability of shared responsibility is not limited to the people of the country but extended to the Government of Malaysia, mainly consisting of the Legislature and the Executive bodies. It is pivotal to note that at the premiere of the winning coalition of GE14, Tun Dr Mahathir Mohamed himself assured that the Government of Malaysia will administer the nation according to the rule of law and not draconian laws.²⁵²

Such affirmation and express commitment to adhere towards the rule of law does prove that both the Legislature and Executive are responsible in upholding the cardinal principle. Moreover, according to the sacrosanct oath of office taken by the Members of Parliament, the Legislature and Executive bodies of the nation are responsible to operate the state machinery to defend the rule of law. In the event of failing to fulfil such a paramount duty, the 4th pillar and/or Supreme Pillar of the Constitution, His Majesty including the Royal Highnesses, the Rulers are entrusted to uphold the rule of law and order in the country.²⁵³

²⁴⁷ *Pegawai Pengurus Pilihanraya Dewan Undangan Negeri Bagi Pilihan Raya Dun N.27 Amino Agos bin Suyub v Dr Streram a/l Sinnasamy & Ors* [2019] MLJU 1558.

²⁴⁸ Glenna Robson, 'A Layman looks at the 'Rule of Law'' (2004) 168 JPN 332.

²⁴⁹ *Lim Cho Hock* (n 235), 196.

²⁵⁰ Federal Constitution, Article 4.

²⁵¹ Edmund Bon Tai Soon, 'Foraging for Rights to Forge a Nation: Is it Time to Reconstitute the Malaysian Constitution?' (2008) Law Review 232, 233.

²⁵² n/a, 'Dr M: Govt to steer Malaysia according to rule of law' *The Star* (Petaling Jaya, 4 October 2019) <<https://www.thestar.com.my/news/nation/2019/10/04/dr-m-govt-to-steer-malaysia-according-to-rule-of-law>> accessed 8 February 2021.

²⁵³ *Nik Nazmi bin Nik Ahmad v PP* [2014] 4 MLJ 157.

As previously mentioned, responsibility and accountability have an inherent discrepancy within them. The judiciary, being the central pillar of the democratic state²⁵⁴ is not only responsible to uphold the rule of law but also accountable to sustain the survival of the principle in Malaysian democracy. The Federal Court in *Alma Nudo Atenza v PP* propounded that it is the duty of the courts to declare what is a valid Act of Parliament²⁵⁵ and such decision cannot be invalidated by any authority outside the courts.²⁵⁶

Malaysian judicial pronouncements do profess that the power of the courts is a natural and necessary corollary of the rule of law²⁵⁷ and it is stressed that the role of the judiciary in upholding the rule of law is in no way inimical to the democratic government.²⁵⁸ As rule of law is the bedrock to which our society was founded and on which it has thrived,²⁵⁹ the 'constitutional soul' of the judge is accountable to safeguard the rule of law as it ensures a nation which is once recognised to be an oasis is not turned into a desert. Conclusively in answering the prime question, the responsibility to uphold rule of law in a nation is upon all members of the society but the accountability and the last word lies with the judiciary.

6. What is the Status of the Rule of Law under the Malaysian Federal Constitution?

As the standing of the judiciary in upholding the rule of law in Malaysia has been explicated, it is necessary to elucidate the status of the concept of rule of law under the Malaysian legal context. As aforementioned, the fountainhead of the operation of the rule of law in Malaysia is the Federal Constitution as confirmed in *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak and other Appeals*.²⁶⁰

The Federal Court ruled that the Constitution 'must be interpreted in light of its historical and philosophical context as well as its fundamental underlying principles'²⁶¹ and affirmed that rule of law is a 'basic feature' of the Malaysian Federal Constitution²⁶² because it was the central precept of the Reid Commission when it devised the Merdeka Constitution.²⁶³ Various judicial precedents have declared that the definition of 'law' in the Federal Constitution is not exhaustive but open-ended by reference,²⁶⁴ *inter alia*, to Article 160(2) of the Federal Constitution which encapsulates the concept of rule of law inherently within it.

²⁵⁴ *National Union of Bank Employees v Director-General of Trade Union* [2013] MLJU 1567.

²⁵⁵ [2019] 4 MLJ 1.

²⁵⁶ *Medical Council Of India v The State Of Kerala* Writ Petition (C) No 178 & 231 of 2018.

²⁵⁷ *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak and other Appeals* [2018] 1 MLJ 545.

²⁵⁸ *Ibid*, 565.

²⁵⁹ *JRI Resources SdnBhd v Kuwait Finance House (M) Bhd* [2019] 3 MLJ 561.

²⁶⁰ *Indira Gandhi a/p Mutho* (n 257).

²⁶¹ *National Union of Bank Employees v Director General of Trade Union* [2013] MLJU 1567.

²⁶² *JRI Resources Sdn Bhd* (n 259).

²⁶³ Reid Commission, *Report of the Federation of Malaya Constitutional Commission 1957* (London, Colonial No.330).

²⁶⁴ *Kekotong Sdn Bhd v Danaharta Urus Sdn Bhd* [2003] 3 MLJ 1.

Consequently and imperatively, the word 'law' in Articles 5(1), 8(1) and in other fundamental liberties provisions in the Federal Constitution must, therefore, be in tandem with the concept of the rule of law and not rule by law.²⁶⁵

The gradualist approach shows that a paradigm shift has occurred in respect to the stature of the concept of the rule of law under the Federal Constitution. Instead of limiting the facets and dimensions of rule of law only to the expression 'law' wherever used in the Constitution, recent decisions do adduce that the stream of the rule of law flows throughout the Constitution.

The quintessential principle is reckoned as a 'basic structure doctrine'²⁶⁶ of the supreme document which requires the court to interpret the Constitution as a *sui generis* instrument whose 'provisions should be read broadly and purposively in a way to advance the protection of fundamental rights' as the ultimate goal of constitutional interpretation is to maintain the rule of law.²⁶⁷

As to further substantiate the claim that the rule of law forms the basic structure and is not limited to the word 'law' in the Federal Constitution, the recent unanimous decision of the Federal Court in *Semenyih Jaya Sdn Bhd v Pentadbir Tanah Daerah Hulu Langat*²⁶⁸ confirmed that the doctrine of the basic structure of the constitution applies in Malaysia and most importantly, pronounced that the doctrine of separation of powers and the independence of the judiciary are part of the basic structure of the Constitution. Even though the rule of law was not explicitly mentioned in the referred decision, in the Federal Court decision of *JRI Resources Sdn Bhd v Kuwait Finance House (M) Bhd*, it was asserted that the doctrine of separation of powers and independence of the judiciary is 'based on the rule of law' which impliedly declares the notion of the rule of law as a part of the basic structure of the Malaysian Federal Constitution.²⁶⁹

As the rule of law is declared as the basic structure and foundational principle of the Constitution,²⁷⁰ the notion of rule of law provides an added safeguard for the fundamental liberties which is enlisted in the Federal Constitution.²⁷¹ The existence and prominence of the rule of law in the Malaysian judiciary ensures that the fundamental liberties under Articles 5 to 13 will be given due regard which is vital to protect individual identities of the vulnerable minorities against the assimilative compression of the secured majority.

²⁶⁵ *Lee Kwan Woh v PP* [2009] 5 MLJ 301.

²⁶⁶ *His Holiness Kesavananda Bharati Sripadagalvaru and Ors. v State of Kerala and Anor* [1973] 4 SCC 225.

²⁶⁷ *Nik Nazmi bin Nik Ahmad v PP* [2014] 4 MLJ 157.

²⁶⁸ [2017] 5 CLJ 526.

²⁶⁹ *JRI Resources Sdn Bhd* (n 259).

²⁷⁰ *Indira Gandhi a/p Mutho* (n 257).

²⁷¹ Federal Constitution, Part II.

Even though the entire Constitution should be interpreted within the ambit of the rule of law, special accentuation should be given to the provisos under Part II of the Federal Constitution as F.A. Hayek has identified that the virtue of rule of law is the protection of individual freedom.²⁷² The fundamental liberties under the Federal Constitution should be interpreted in light of the rule of law as it is necessary to relate the law with the indispensable ‘assessments of human values and purposes of the society’.²⁷³ For instance, in *Nik Noorhafizi bin Nik Ibrahim v PP*, the court interpreted Article 5(1) in consideration of the rule of law to accommodate the procedural and substantive rules of justice within the liberty of a person.²⁷⁴

Similarly, in *Sugumar Balakrishnan v Pengarah Imigresen Negeri Sabah*, the Diceyan postulate of ‘equality before the law’ was stated to be enclosed within Article 8(1) and affirmed that the ‘basic principle of the rule of law permeates every provision of the Constitution’.²⁷⁵ The above-mentioned examples do corroborate the gradualist approach of the Malaysian judiciary favouring a more liberal judicial treatment upon the notion of rule of law. Progressively, the courts have expressly acknowledged that the foundational axiom is necessary for giving full force and might to the Federal Constitution,²⁷⁶ principally in defining as well as enforcing the rights of individuals.²⁷⁷

Speaking of rights of individuals, aside from a bill of rights containing an enumeration of individual fundamental liberties, the supreme document also contains provisos which recognise group-specific rights and legitimises affirmative action policies in favour of Malays and natives of Sabah and Sarawak. Even though the rule of law requires scrupulous adherence to human rights standards, notably, equality before the law,²⁷⁸ the Federal Court ruled that in Malaysia, ‘there cannot be absolute freedom’ and declared that freedom is not an absolute right but granted under the law.²⁷⁹

Being in a plural society, the courts perceive that fundamental liberties interpreted in the light of the rule of law are not a charter for treating the unequals alike or the equals unequally, but contend that the Diceyan doctrine of equality can only survive by resting on valid classifications.²⁸⁰ Therefore, although the courts have accepted rule of law as a basic structure of the Constitution, the optimal potential of the doctrine is restricted due to the

²⁷² [1980] 2 MLJ 148, 198.

²⁷³ *National Union of Bank Employees v Director-General of Trade Union* [2013] MLJU 1567.

²⁷⁴ [2013] 6 MLJ 660.

²⁷⁵ [1998] 3 MLJ 289.

²⁷⁶ *Pegawai Pengurus Pilihanraya Dewan Undangan Negeri Bagi Pilihan Raya Dun N.27 Amino Agos bin Suyub* (n 247).

²⁷⁷ *Sivarasa Rasiah v Badan Peguam Malaysia* [2010] 2 MLJ 333.

²⁷⁸ Raz (n 241), 333.

²⁷⁹ *Kerajaan Malaysia* (n 211).

²⁸⁰ *Pengurusan Danaharta Nasional Berhad v Yong Wan Hoi & Anor* [2007] 6 MLJ 709.

unresolved political and social issues²⁸¹ which Professor Dr Shad Saleem Faruqi coined as 'dark clouds over the horizon'.

While the scope of the supreme law is both vast and deep, the crux of the Federal Constitution can be observed in Part II of the charter which enlists the fundamental liberties which are converged upon the rule of law. As asserted earlier, courts being the vanguards of the doctrine of rule of law bear the duty of interpreting the provisions by construing the Constitution in its entirety so as to safeguard fundamental liberties.²⁸²

Essentially, as the notion of rule of law flows throughout the Constitution, the meaning of a provision in dispute is adjudicated with regards to the other Articles in the Constitution itself which formulates several issues that contravene the utopian intentions of the doctrine. As for this exposition, the practical germaneness of the rule of law to the enforcement of the rights in respect of education by virtue of Article 12(1)²⁸³ is examined comprehensively.

Before delving into the adherence of the enforcement of Article 12(1) according to the rule of law, it is crucial to grasp the historical background of education in Malaysia generally. In the era of British colonisation (1786-1957), the pyramidal colonial educational system created an ominous inequality in the distribution of educational opportunities between members of society. Although the Malay feudal class had access to secondary and/or tertiary education via the British-oriented elitist education systems, the majority of the Malay population could only pursue education at elementary level, whereas, the educational policy of the great number of Indian and Chinese people were concentrated upon vernacular schools. This allowed the British to maintain economic and cultural separatism in the society.²⁸⁴

As Malaysia achieved independence, the dream of democratization of education was realised by the 'rapid provision of universal, free primary and secondary education' and notably, the Alliance Party did perceive education as an instrument to form a more egalitarian and unified community.²⁸⁵ Due to the crisis in May 1969, there was a pressing need for the Alliance Party 'to restructure the Malaysian society' by launching the New Economic Policy in 1971, principally favouring the Bumiputra population in various sectors of the nation, especially education.²⁸⁶ Such legitimised preferential treatment is still

²⁸¹ Shad Saleem Faruqi, *Our Constitution* (Thomson Reuters 2019) 290.

²⁸² Edmund Bon Tai Soon (n 251), 233.

²⁸³ Federal Constitution, Article 12(1).

²⁸⁴ Viswanathan Selvaratnam, 'Ethnicity, Inequality and Higher Education in Malaysia' (1988) 32 *Comparative Education Review* 173, 175.

²⁸⁵ *Ibid*, 177.

²⁸⁶ Reuben Balasubramaniam, 'Hobbesism and the Problem of Authoritarian Rule in Malaysia' (2012) 4 *Hague Journal on the Rule of Law* 211, 227.

regarded by some scholars to be against the Diceyan rule of law whereas the advocates of affirmative action perceive it as a 'necessary evil' to preserve the 'social contract'.

Through a narrow lens, Article 12(1) is a priceless provision, which eradicates discrimination in the context of religion, race, descent or place of birth, in admission into any public educational institutions, payment of fees or any public aid. The issue against the Diceyan notion of rule of law arises when Article 12(1) is interpreted in view of Articles 153(4) & (8A) which affirms the preferential treatment favouring the Malays and natives of Sabah and Sarawak in every facet of education.

The concept of open competition or contest mobility which was practised in the early years of independence²⁸⁷ was removed and replaced by a 'quota system' which was deemed essential to reflect the ethnic composition of the country in public educational institutions. For example, the recent controversy regarding the 90% allocation of matriculation admission to Bumiputras²⁸⁸ substantiates the rift of the notion of rule of law, within Article 12(1), on paper and in practice due to its interpretation as well as enforcement.

Anyhow, it is vital to understand that a blanket preferential policy which has witnessed mismanagement of quotas has proven to widen the intragroup inequality.²⁸⁹ To illustrate, referring to the Constitution (Amendment) Act of 1971²⁹⁰ and the Universities and University Colleges Act of 1971,²⁹¹ tertiary educational institutions were required to admit more Bumiputra students to actualise the objectives of the Second Malaysia Plan (1971-1975) which was based on the 1971 New Economic Policy²⁹² but due to the aforementioned reason, the mission remains as a future vision.²⁹³

Furthermore, the lack of regard for a thick perspective of rule of law in enforcing educational rights has forced the non-Bumiputras to pursue education through private institutions which are comparatively expensive, funneling some of them through a vicious cycle of lower educational opportunities leading to lower living standards.²⁹⁴ Education is observed as an avenue of self-advancement and 'the talisman of hope and symbol of

²⁸⁷ Shad Saleem Faruqi (n 281), 181.

²⁸⁸ Nathaniel Tan, 'Maszlee and the return of dangerous political fault lines' *The Star* (Kuala Lumpur, 21 May 2019) <<https://www.thestar.com.my/opinion/columnists/all-the-pieces-matter/2019/05/21/maszlee-and-the-return-of-dangerous-political-fault-lines/>> accessed 8 February 2021.

²⁸⁹ Nurul Izza Idris, 'Rethinking the value of preferential treatment' (2009) *UCL Jurisprudence Review* 45, 52.

²⁹⁰ Constitution (Amendment) Act of 1971.

²⁹¹ Universities and University Colleges Act of 1971.

²⁹² Government of Malaysia, *Second Malaysia Plan 1971-75* (National Printing Department 1971) 232.

²⁹³ James Joseph Puthuchery, *Ownership and Control in the Malayan Economy* (Eastern University Press 1960) 230.

²⁹⁴ Malaysian Chinese Association, *Memorandum on the Review of the National Education System in Malaysia* (MCA Education Bureau 1975) app. 2.

success'²⁹⁵ by the Malaysian community due to 'structural, socio psychological, and group-variable influence'.²⁹⁶

The preferential treatment opposing the ideal application of the rule of law has made the 'Bumiputra factor' the golden ticket to various educational opportunities at the expense of equality for all.²⁹⁷ This proves that the preferential system opposing the optimal operation of the rule of law is not justified based on the nation's collective need and welfare but is instead heavily dependent on racial policies.²⁹⁸

However, every coin has two sides to it. In this case, the flip side would be explicated under distinct justifications. It is pertinent to emphasise that sameness is not required to achieve equality but the adoption of specific means as to fulfil specific needs are required for greater equity. For example, despite the preferential treatment over certain education matters, the Pakatan Harapan government has upheld the axiom of rule of law under Article 12(1) by providing the necessary funding for all public educational institutions in Malaysia, including vernacular schools irrespective of racial backgrounds under Part VII of the Federal Constitution.

For example, under the recent announcement of '2020 Budget', an equal amount of RM50 million was provided to Tamil and Chinese vernacular schools as well as Sekolah Berasrama Penuh (SBP) together with Maktab Rendah Sains Mara (MRSM) to maintain and upgrade the schools.²⁹⁹ This authenticates that the Diceyan doctrine of equal rights under Article 12(1) is indubitably safeguarded, as every student of any public education institution is provided with the liberty to relish the fruit of public funding without being anchored down by their social background.

Additionally, the abolishment of fixed criteria to qualify for the School Textbook Loan Scheme further substantiates the operation of the rule of law in the educational policies of the Malaysian government as every student has equal access to competent resources.³⁰⁰ Regardless of the disparities created by the preferential treatment, the notion of rule of law is practised under Malaysian educational policies by embodying social inclusivity as well as

²⁹⁵ Thambiayya Marimuthu, 'Education, Social Mobility and the Plantation Environment' (1971) 2 *Jurnal Pendidikan* 91.

²⁹⁶ P.G. Carpenter and J.S. Western, 'Aspirations for Higher Education' (1982) 26 *Australian Journal of Education* 266, 278.

²⁹⁷ Shad Saleem Faruqi (n 281), 187.

²⁹⁸ *Manoharan Malayalam & Anor v Dato' Seri Mohd Najib Abdul Razak & Ors* [2013] 8 CLJ 1010.

²⁹⁹ n/a, 'Education Ministry largest 2020 Budget recipient with RM64.1b' *New Straits Times* (Kuala Lumpur, 11 October 2019) <<https://www.nst.com.my/news/government-public-policy/2019/10/528981/education-ministry-largest-2020-budget-recipient-rm641b>> accessed 8 February 2021.

³⁰⁰ Abd Murad Salleh, Marohaini Yusoff & Shahrir Jamaluddin, 'Penggunaan buku teks dalam kalangan guru dan murid sekolah menengah: satu tinjauan kuantitatif' (2008) 28 *Malaysian Education Journal* 147, 150.

nurturing communal integration via various policies such as 'Shared Prosperity Vision 2030'³⁰¹ in conjunction with racial distinctions as to reduce horizontal inequality.

The Reid Commission did mention that the preferential treatment is necessary as the 'Malays would be at a serious and unfair disadvantage if they were suddenly withdrawn'. The Commission also stated that 'the need for the preferences will gradually disappear so that there should be no discrimination between races' to uphold the ideal character of the rule of law.³⁰² The notion of rule of law can be optimally practiced in the Malaysian education system by enforcing educational rights as to placate and accommodate the disparate necessities of each distinct social group.

As a suggestion, a special criterion, exclusively concerning the preferential treatment in educational opportunities that are based on socio-economic status irrespective of race and religion would be a better alternative. The previous executive branch of government was expected to reform the Malay Agenda/ Bumiputra policy as the Council of Eminent Persons (CEP) advocated that reforms to the affirmative action policies are essential to carry Malaysia to the next economic tier.³⁰³

7. Conclusion

The idealistic axiom of the rule of law is a key hallmark of the Malaysian Federal Constitution which could potentially reshape the future of our nation despite the political situation of the country and protect the legitimate interests of each individual of the society. This chapter asserts that the dogma of the rule of law is the safeguard that serves to counteract arbitrary exercise in a 'regime of exception'³⁰⁴ with authoritarian methods. The Malaysian road towards the thick perspective of the rule of law has just begun to be constructed as the Malaysian judiciary and executive have subscribed to the gradualist approach despite the different momentums which is evident through the recent judicial pronouncements and administrative decisions respectively.

In Malaysia, the executive restrains or progresses slowly in acceding to various international obligations³⁰⁵ claiming to secure the 'social contract'³⁰⁶ whereas the judiciary has started to

³⁰¹ Adib Povera and Arfa Yunus, 'Education Ministry's main focus is vision for shared prosperity through education' *New Straits Times* (Putrajaya, 6 February 2020) <<https://www.nst.com.my/news/nation/2020/02/563098/education-ministrys-main-focus-vision-shared-prosperity-through-education>> accessed 8 February 2021.

³⁰² *Indira Gandhi a/p Mutho* (n 257), 74.

³⁰³ James Chin, 'New Malaysia: Four key challenges in the near term' (2019) Lowy Institute for International Policy 1, 5.

³⁰⁴ Tim N. Harper, *The End of Empire and the Making of Malaya* (Cambridge University Press 2001) 2.

³⁰⁵ Tashny Sukumaran, 'Mahathir's U-turn on UN race treaty: for Malaysia, a necessary-if backwards- step?' *South China Morning Post* (Hong Kong, 2 December 2018) <<https://www.scmp.com/week->

construe the axiom of rule of law broadly by referring to unincorporated treaties in the decision-making process. The gradual incorporation of international law by the judiciary within the municipal system of law has transformed Malaysia from demarcating the axiom of the rule of law within the walls of the thin perspective, to broadly interpret it in consideration of the thick perspective. The gradualist approach has allowed the judiciary to stand in the middle of the road facing the direction of the thick perspective of the rule of law.

Nevertheless, it is vital to understand that the judiciary still waves a red flag in welcoming international human rights law as a whole and appreciates that ‘some diminution in the strength of the rule of law’ is necessary to accommodate executive decisions.³⁰⁷ Therefore, the coordination between the executive and the judiciary is fundamental to adopt the international standards of the rule of law. As a recommendation to actualise such coordination, it is suggested that the rule of law should not be merely used as empty rhetoric but the executive should operationalise the rule of law conception of the judiciary and work as an integrated system to protect the basis of a democratic state.

Democracy can be defined as ‘an interminable participative operation’³⁰⁸ which is resolutely built upon the principle of rule of law. The Malaysian Federal Constitution is a *magnum opus* of compromise and moderation which is further strengthened by the shared responsibility of all members of the society in upholding the principle of rule of law. Even though the responsibility of preserving the principle is shared by all, it is indisputable that the accountability of defending the rule of law rests with the judiciary. The courts, being the guardian of constitutional rights,³⁰⁹ interpret as well as enforce constitutional provisions conferring rights with the fullness required to preserve the rule of law.

The chronicle of the Malaysian Federal Constitution provides that the country is founded upon the principle of rule of law³¹⁰ and recent judicial decisions have affirmed that the rule of law is not merely a competing value but forms a part of the ‘basic structure doctrine’ of the supreme document. Rather than confining the axiom into the word ‘law’ in the Federal Constitution, the judiciary has progressed in acknowledging the dogma to be construed as an integral part of the *sui generis* document which cannot be impugned.

asia/politics/article/2175870/mahathirs-u-turn-un-race-treaty-malaysia-necessary-if-backwards> accessed 8 February 2021.

³⁰⁶ Mohd Roslan Mohd Nor & Mahmud Ahmad, ‘The Malay Muslim Dilemma in Malaysia after the 12th General Election’ (2013) 1 Malaysian Journal of Democracy and Election Studies 10, 11.

³⁰⁷ *Madhuvita Janjara Augustin* (n 240), 245.

³⁰⁸ *Mohinder Singh Gill & Anr. v Chief Election Commissioner & Ors* [1977] Indlaw SC 53.

³⁰⁹ *Hock Huat Chan Sdn Bhd v Assan bin Mohammad & Ors* [2008] MLJU 92.

³¹⁰ Kevin Y.L. Tan, ‘The Role of Law of Public Law in Developing Asia’ (2004) Singapore Journal of Legal Studies 265, 285.

Although the reading of Article 12(1) in the ambit of Articles 153(4) and (8A) legitimises preferential treatment opposing the Diceyan postulates, such interpretation is required to preserve the sanctity of the 'social contract' as the preferential educational policy is 'deeply embedded in the structure of Malaysian society'.³¹¹ As a suggestion to operationalise the Diceyan principle of rule of law within the Malaysian educational policies, the B40 benchmark³¹² can be set as the special criterion concerning preferential treatment as it would embody social inclusivity and nurture communal integration.

The change of regime in May 2018 provided confidence to the people and a powerful reminder to politicians that deeper reforms consolidating the notion of rule of law would and should be made in the future years of administration. With yet another regime change in 2020 the hope is that the thick understanding of rule of law will progressively develop. Ultimately, it is affirmed that the rule of law acts as a 'facilitator and guarantor of sound business and investment environment'³¹³ which will enhance economic productivity and political stability of the nation regardless of which regime is actually in power.

³¹¹ Nurul Izza Idris, 'Rethinking the value of preferential treatment' (2009) UCL Jurisprudence Review 45, 48.

³¹² Rebecca Rajaendram, 'Giving B40 a chance at quality education' *The Star* (Putrajaya, 30 April 2019) <<https://www.thestar.com.my/news/nation/2019/04/30/giving-b40-a-chance-at-quality-education/>> accessed 8 February 2021.

³¹³ *Madhuvita Janjara Augustin* (n 240), 245.

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