

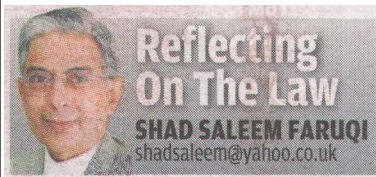
Headline **Spirit of moderation animated**
Date **01 Jun 2011**
MediaTitle **The Star**
Section **Nation**
Journalist **N/A**
Frequency **Daily**
Circ / Read **304,904 / 1,026,812**

Language **English**
Page No **32**
Article Size **496 cm²**
Color **Full Color**
ADValue **18,561**
PRValue **55,683**



Spirit of moderation animated

The guiding principle of the Constitution is equality before the law and equal protection of the law, and its spirit one of accommodation, compassion and tolerance for all.



AT a constitution-drafting conference in Khartoum, Sudan, last week, Malaysia was highlighted as a Muslim-majority country where Islam goes hand-in-hand with democracy, development, inter-communal harmony and women's emancipation.

It was flattering to listen to such praise of our country in a foreign capital.

At the same time, some foreign diplomats commented on the ethno-religious controversies that have afflicted the Malaysian body-politic over the last decade, the most recent being whether under the Constitution the Prime Minister can be a non-Malay, whether there is a conspiracy to convert Malaysia into a Christian state and whether government scholarships are reserved only for Malays.

I believe that for all three issues, the Constitution gives clear answers.

The controversies exist only because some politicians wish to shore up their support by planting seeds of discord and augmenting racial and religious polarisation.

Choice of PM: The power to appoint the Prime Minister is vested in the Yang di-Pertuan Agong subject to the following guidelines:

First, the PM must be a citizen by operation of law.

Second, he must qualify as an MP and must be at least 21 years of age.

Third, he must be a member of the House of Representatives.

Fourth, in the judgment of the King, the appointee must be "likely to command the confidence of the majority of the members of that House".

If there is a majority party or coalition in the Dewan Rakyat (as has existed after all 12 federal elections up to now), then the Yang di-Pertuan Agong's role as a constitutional mon-

Headline **Spirit of moderation animated**
 Date **01 Jun 2011**
 MediaTitle **The Star**
 Section **Nation**
 Journalist **N/A**
 Frequency **Daily**
 Circ / Read **304,904 / 1,026,812**

Language **English**
 Page No **32**
 Article Size **496 cm²**
 Color **Full Color**
 ADValue **18,561**
 PRValue **55,683**

arch is nominal.

He is expected to appoint the leader of the majority party or coalition.

However, in extraordinary circumstances like a "hung parliament" (where no political group commands a clear majority), the Yang di-Pertuan Agong's personal judgment will play a critical role.

It is noteworthy that for the post of PM (unlike the post of MB in the nine Malay States with a Sultan), the racial origin of the nominee is not legally relevant.

Neither is gender, religion, region or political affiliation.

The Constitution does not prescribe that the PM must belong to any particular party or that he must be the leader of the largest party.

The critical issue is can he/she, in the judgment of the King, command the confidence of the lower house?

It is within the realm of legal possibility that in some distant future, there will be a hung Parliament and political wheeling and dealing will thrust a non-Malay or a woman or an east Malaysian to the mantle of leadership.

Let us not forget that Sabah and Sarawak control 56 out of 222 Members of Parliament, and a bloc so large can tilt the balance one way or the other.

Position of Islam: The unsubstantiated allegation that some politicians and pastors are conspiring to convert Malaysia into a Christian state is as absurd as it is mischievous.

A look at the constitutional amendment procedure in Article 159 indicates that any attempt to amend Article 3(1) – which declares Islam as the religion of the Federation – will require the following mandatory procedures:

> A special two-thirds majority of the total membership in both houses of Parliament at the second and third readings;

> The concurrence of the Conference of Rulers; and,

> The consent of the Yang di-Pertuan Agong.

Clearly the Yang di-Pertuan Agong and the nine Malay rulers have veto powers over any legislation that may affect the exalted position of Islam.

Islam's position in the Federal

Constitution is deeply entrenched at the heart of the legal and political system.

At least 30 Articles of the Constitution refer to Islam, the Syariah Courts, the Mufti and the Kadi.

Under Article 3(1), Islam is the religion of the Federation.

Under Article 11(4), propagation of any religion to Muslims can be regulated by state law.

In effect, this forbids non-Muslims from preaching their faith to Muslims.

The definition of a Malay is inextricably linked with Islam.

Islamic education is mandatory for Muslims.

The Constitution permits taxpayers' money to be utilised to build mosques, provide for Syariah Courts and to impart Islamic education to Muslims.

In all states other than Sarawak, Islam is the religion of the state.

Islamic religious affairs councils exist.

Muftis and Syariah Courts are provided for by the law.

In addition to legal provisions about Islam as "the religion of the federation", there is a growing list of Islamic economic institutions like the Islamic Bank, Tabung Haji, Islamic University and IKIM, which thrive with federal support.

Since the 80s, Islamic cultural and religious practices have become mainstream.

Islamic programmes are aired on TV at least 15 hours a week. Islamic salutations are used at all official functions.

It is, therefore, quite ridiculous to suggest that a small Christian minority with no political clout can bring about the displacement of Islam from its high pedestal and accomplish a change as radical as the repeal of 30 Articles of the Federal Constitution and scores of similar Articles in 13 State Constitutions.

Affirmative Action: Some extremists are suggesting that because of Article 153, which permits affirmative action in favour of Malays and natives of Sabah and Sarawak, no government scholarships should be awarded to a non-Malay.

Such bigotry is not surprising because extremism, racism and

hatred of "the other" exist everywhere in the world.

However, no one who has any veneration for human rights, rule of law and constitutionalism will deny that the guiding principle of the Constitution is equality before the law and equal protection of the law.

Nevertheless, as part of the pre-Merdeka "social contract", the Constitution in Article 153 permits the Yang di-Pertuan Agong to reserve "such proportion as he may deem reasonable" of positions in the public service; scholarships, educational or training privileges or special facilities; permits or licences; and places in institutions of higher learning for the benefit of indigenous races.

In interpreting the exceptional provisions of Article 153 it must be noted that in their natural meaning, quotas and proportions are never total, monopolistic or exclusive of others.

Under Article 153, affirmative action is not meant to apply across the board but only in the four areas permitted by Article 153(2).

Further, Article 153(1) also enjoins the King to safeguard the legitimate interests of other communities.

It is really regrettable that what was meant to be a form of affirmative action has now acquired such racist, hostile tones.

If one were to study the background constitutional papers, it would clearly indicate that the spirit of the Constitution was one of accommodation, compassion and tolerance for all.

Malay privileges were offset by safeguards for the interests of other communities.

This is what contributed to our exemplary record of racial, cultural and religious harmony.

The negative forces that are at work today are posing a severe challenge to the foundation established in 1957.

It is time for right-thinking Malaysians to unite behind their Constitution and to continue to walk the middle path blazed by our forefathers.

> *Prof. Shad Saleem Faruqi is Emeritus Professor of Law at UiTM and Visiting Professor at USM.*