

Karpal Singh

An interview by Chris O'Donnell

On 25 July 2002, Karpal Singh delivered an address on 'The Judiciary, Executive, Royalty and the Law in Malaysia' before a full house in the Bar Common Room.

A distinguished lawyer and former member of the Parliament in Malaysia, Karpal Singh spoke of worrying developments for human rights and the independence of the Judiciary in that country. Mr Singh discussed the introduction of legislation in the States of Terengganu and Kelantan, which is designed to implement Syariah (Islamic) law for a range of offences. He described the Bills as 'draconian' and 'pregnant with serious blows to the public and national interest and the judicial system' and questioned their validity, arguing that they were inconsistent with federal constitutional law.

Karpal Singh criticised some members of the Malaysian judiciary for not withstanding the 'overbearing influence of Dr Mahathir'. It is, he argued, 'important for a judiciary worth its name to be assertive in its defence of the rule of law and its own independence and integrity, so as to ensure there is no loss of confidence in an institution which is vital to any democracy'.

Mr Singh finished his address with a reference to the case of Anwar Ibrahim. He believes there is still recourse to clemency on the part of the King of Malaysia, who may decide a case on the grounds of public policy. A royal pardon, he argued, would 'restore public confidence in the Executive, the Judiciary and the law in Malaysia'.

Before his address, *Bar News* and *The Sydney Morning Herald* conducted an interview with Mr Singh.

Singh's early career

Bar News: Karpal Singh, it's an honour to have you here in Sydney and we are delighted you are willing to be interviewed by *Bar News*. Going back to your childhood, why did you decide to study law?

Karpal Singh: Well, my father actually wanted me to be a doctor, so I had to go against his wishes. I would have liked not to, but I had no alternative. I wanted to do something innovative.

Bar News: A bit more so than medicine?

Karpal Singh: Yes. It would be more of a certain thing and I would grow, like the practice I have back in Malaysia. On reflection, with the type of cases I have now, I took the right course in becoming a lawyer.

Bar News: Did your schooling take place in Penang?

Karpal Singh: Yes, in Penang at St Xavier Institution. I got a bit of discipline there with the Christian Brothers. I think they certainly taught me the right principles and the right path to take.

Bar News: Did they teach you some of the principles that you have carried through to your practice of law?

Karpal Singh: Oh yes, and I think discipline in the sense of being able to decide what you had to do and do it. If you think it is right, come what may.

Bar News: Moving forward to your study of law, you went to the University of Singapore?

Karpal Singh: Yes.

Bar News: Was there a particular reason you chose that university?

Karpal Singh: Well, the main reason was this: my father was not in a position to send me to London.

Bar News: You would have chosen Cambridge or Oxford or somewhere like that?

Karpal Singh: I would probably have gone to the Inns of Court which would have meant I would have got a diploma and come back to practice and get right into action.

Bar News: Has the focus of your practice principally been in the criminal law area?

Karpal Singh: Yes. I had some lucky breaks in the beginning. I started off in a very small town called Alor Star, which is about 60 miles from Penang. One of the reasons for that was I couldn't get a job in Penang, and somehow I ended up there



My father actually wanted me to be a doctor.

in Alor Star. There I had the opportunity to take on cases where I could test in court the rights of the ordinary citizen, which I would not have been able to do had I gone down to the capital for example, Kuala Lumpur.

Bar News: Why were you able to do that in a smaller town and not in the capital?

Karpal Singh: Being a young man and being a young practitioner it was not very easy to get a matter upon which to work. There, I could. One, because it was not that competitive and of course in point of money you could not get much. At the beginning I think it is very important to get cases, even small cases. In fact, the first case I had was ownership of a buffalo in a Magistrates Court.

Bar News: Were you successful in that case?

Karpal Singh: Yes, I won that case and ironically it went about this way. The prosecution had to prove that the buffalo belonged to the complainant. Of course that was a crucial element - ownership by the person who makes the complaint with regard to

theft. Buffalos have in their ear a number – they are registered in that way. So the buffalo was brought to court, tied to a tree outside, and I insisted that to prove ownership we go and have a look at what the number was that belonged to this man. Of course, I was in a black coat and tie, so was the magistrate, and the officer who prosecuted was a police officer who was in police uniform. I went towards this buffalo with the court staff and this buffalo snorted. The magistrate said they dare not go any nearer. I said ‘Look here, it has not been proven’. It was a good point and he was acquitted and discharged. But the upshot of it was this, my man said: ‘OK, since I paid you and I have been acquitted and discharged I should get the buffalo.’ I said: ‘Please, you should go away from here as fast as you can!’

Bar News: Were you in sole practice then?

Karpal Singh: No actually I was with someone. I took up a position as a legal assistant and then I was with him for about a year, but I got the opportunity to have good cases to get on with.

Bar News: At that time were you involved in any death penalty cases?

Karpal Singh: Yes. There were seven people who were charged with murder and I had three of them to defend. I was able to get them off. It was a jury trial then - we don't have jury trials any more. In fact, we have never had them for civil matters, it was only for criminal matters and those were taken away, the right to it was taken away nearly 10 years ago in all criminal matters.

Bar News: You regard that as a significantly retrograde step?

Karpal Singh: I would have thought so, because it was better to have a jury. The jury would be the one which would make findings of fact, and with the cross section of the community there, it would be better than a judge. I am sure you have been before judges who make up their minds very quickly.

Bar News: Going back to the history of your career, you moved back to Penang?

Karpal Singh: Yes, I was asked to stand for elections by my party in Alor Star in 1974. I managed to win the seat.

Bar News: Alor Star is the home of Dr Mahathir isn't it?

Karpal Singh: Yes, that's right.

Bar News: Did your paths cross at any stage?

Karpal Singh: Not at that point in time. He had lost his seat in Parliament in 1969. He was a minister at that point, but he lost his seat and I practically became his assembly man.

Bar News: 1969 was also the year of significant race riots in Malaysia.

Karpal Singh: Yes. I had not joined any party at that point in time.

Bar News: Was that a significant, formative event for you?

Karpal Singh: Yes, it was important. It was a cross-roads as far as Malaysian politics was concerned. I had to make a choice and I threw in my lot with the opposition and the Democratic Action Party.

Bar News: When did that party first come into existence?

Karpal Singh: That party was once the PAP - the People's Action Party in Singapore. Singapore joined Malaysia in 1963 but it got out a few years later. When Singapore left the federation, we had to change our name - although I wasn't with them in 1969 -

but it became the Democratic Action Party, or the DAP.

Bar News: You were with them for eight years until you were elected to parliament?

Karpal Singh: Yes, then I was elected in Penang. I moved on to my own home town and I stood for elections there.

Bar News: How did you set up practice in Penang?

Karpal Singh: After starting off in Alor Star, political considerations led me to Penang, and I settled in Penang itself. And from there, of course later on, I went to Kuala Lumpur and I have been there for quite some time.

Bar News: How did the practice of law in those early years in Penang fit in with your political activities? You obviously divided your time between the two?

Karpal Singh: It is not easy to have the two vocations, which are practically irreconcilable, because just one can require all the time you have. You have got to divide it. I managed to strike some balance and I have been able to carry on.

Drug trials / death penalty

Bar News: I thought I would ask you briefly about your role in Malaysian cases involving foreign drug offenders. One that was prominent of course is *Barlow & Chambers* in 1986. Can you tell us a bit about how you became involved in those cases and your feelings of them and perceptions about them?

Karpal Singh: OK, both Barlow and Chambers were represented by another lawyer at the beginning and it was later on that Mrs Barlow went down to Penang and asked that I take over the case from the other lawyer. I did not defend Chambers I actually only defended Barlow. The perception seemed to be I defended both, but I didn't, it was only Barlow.

The trial was conducted by the present Chief Justice of Malaysia, who was then a High Court judge in Penang. Unlike your system here, where the High Court is the highest, ours is the lowest of the superior courts, you get from there to the Court of Appeal and the Federal Court. Of course, I had a lot of problems in that case. Firstly, I think the lawyer for Chambers was quite wrong in having relied on confidential information, which in fact was not true from the instructions that I had and that was very crucial to the case.

Now, what happened was this: both of them were arrested at the airport. Barlow was carrying the bag in which the stuff was found. But when he was asked to open it he said, ‘Look here, it is not my bag, I don't have the key’. In fact, it was a combination lock. It was Chambers who then opened it, and I would have thought then that Barlow could have got off. But unfortunately Chambers' lawyer brought in this element of Barlow having tried to bribe the arresting officer, which was not true. Barlow assured me to the end that he did not do that.

Bar News: It was a cut-throat defence?

Karpal Singh: Yes, which I thought was wrong, especially when this man was the lawyer for both at one point in time. I asked for his disqualification: this man ought to have been disqualified for having breached professional ethics. It was wrong for him to do that. In any event, Barlow told me that he never did that. That complicated the position.

Bar News: Was there any scope to go for a re-trial?

Karpal Singh: I tried to do that at the appellate level but some of our opposition just did not agree. And I had problems at the appellate level with another lawyer whom the family appointed - Mr Galbally. I had a lot of trouble.

Karpal Singh: After we lost the case in the High Court the

Possession of even part of a firearm or just a single bullet attracts the mandatory death penalty.

family asked if I would mind if an Australian lawyer came, and I said: ‘Not at all, in fact we need all the help we can get’. And Frank Galbally was asked to go, which he did.

Bar News: Were you appearing as his junior counsel or co-counsel?

Karpal Singh: No, no. Mr Galbally could not appear in Malaysia. He went there for the purpose of assisting me.

Bar News: At that time, the Malaysian Government had decided to take a very hardline approach against drug offenders.

Karpal Singh: Oh yes, in fact the penalty before April 1983 when it came to drug trafficking was either life imprisonment or death. There was an option given to the judge. The death penalty was made mandatory in April 1983.

Bar News: For small quantities?

Karpal Singh: Yes. The minimum cut off point was 15 grams for heroin and for cannabis, 200 grams. Any amount above that attracted the mandatory death penalty.

Bar News: Was there a reduction in penalty for personal use above those quantities?

Karpal Singh: Yes, if you could establish that. Of course if it

was about 600 or 700 grams, it is difficult to prove that it is for your own consumption, especially for heroin. But I had one case that concerning a mother and son from New Zealand: the case of Lorraine and Aaron Cohen. They were both charged with drug trafficking.

I showed the judge the needle marks on Lorraine Cohen’s arms to prove that she was an addict and that the heroin was for her personal use. The judge nevertheless found her guilty and sentenced her to death. However, this point was upheld by the Supreme Court on appeal and the charge was reduced to possession of the drug and she was sentenced to life imprisonment. Her son who had been sentenced to life imprisonment for possession by the High Court had the sentence confirmed by the Supreme Court.

On Malaysia’s Internal Security Act

Bar News: Could we discuss the origins of Malaysia’s Internal Security Act? I understand that it began with laws introduced by the British to combat the communist insurgency?

Karpal Singh: That’s right. It was brought about at the height of the communist insurgency when there were a lot of assassinations. The Communist Party was not accepted by the government and went to the jungle to conduct armed revolution. But they were not as draconian as some of the laws that later came about, for example, the *Essential (Security Cases) Regulations* in 1975.

The 1949 regulations enacted by the British were then rehashed and made into the *Internal Security Act 1960*, which is still in force. It was never intended for use against political opponents and in fact when the Bill was passed, the prime minister on the floor of parliament assured us that it would never be used against political opponents. But they started using it against us.

Bar News: When did that first happen?

Karpal Singh: That happened first in 1963 or 1964. They

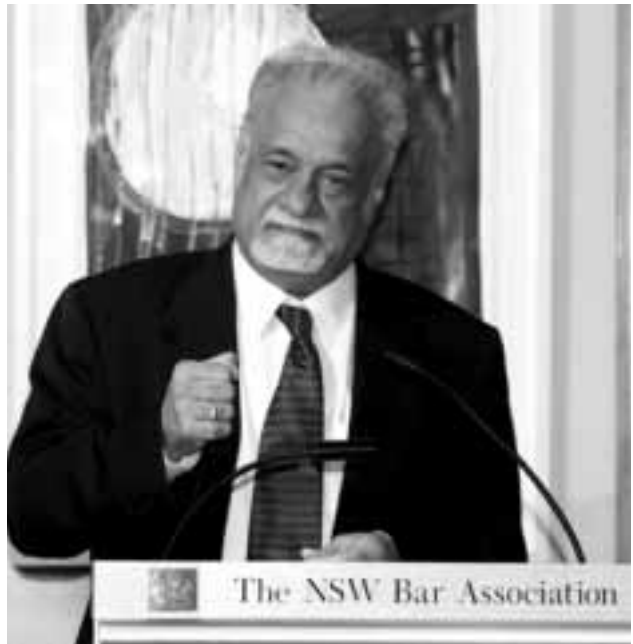
started detaining people who were in the Socialist Front at that time. There was one very strong opposition party, the Labour Party.

Bar News: Is the power that is most used under that Act the one of arbitrary arrest and detention?

Karpal Singh: That is one aspect of it. The Internal Security Act, provides for the mandatory death penalty for any person in possession of a firearm in a ‘Security Area’. But the whole country was declared a security area in 1969 after the 13 May disturbances and that remains the position up to now. Possession of even part of a firearm or just a single bullet attracts the mandatory death penalty.

There was a case I had back in 1977, which went on to appeal in the Privy Council, which Malaysia still had at that time. A man was charged for possession of firearms, but he was tried under the regulations, which were promulgated by the King in 1975 pursuant to emergency powers conferred on the King in 1969. My argument was this, when parliament met in 1971, the regulation making power came to an end. So the King could not promulgate regulations in that form in 1975.

I took the case to the High Court and the Federal Court but



A forceful speaker

lost and ultimately I took it to England to the Privy Council and there the Privy Council ruled the regulations were in fact unconstitutional.

Bar News: Was that recognised in Malaysia?

Karpal Singh: That is the point. That was in 1978 in December when the Privy Council declared the regulations void. It was reported in the *Appeal Cases [Teh Cheng Poh (alias Char Mea) v Public Prosecutor, Malaysia 1980 [AC] 458]*

Now in January 1979 parliament immediately met in an emergency session. They brought in the *Emergency Essential Powers Act 1979*, similar to the law which had been declared null and void by the Privy Council and they made the regulations retrospective.

The Privy Council agreed with me that the regulations were void. They set aside the death sentence but they remitted the case to the Federal Court for it to decide whether or not to order a retrial, after ruling that the trial was a nullity because the

The retrial of the matter went back to the High Court but by that time appeals to the Privy Council had been abolished and my client was ultimately hanged, along with 25 others who were affected by the Privy Council ruling.

regulations were null and void. You can't order a retrial of a nullity, but the Privy Council did that, which I have never been able to understand.

Then in January, when they moved the Bill in parliament - and I was in parliament then - and the Federal Court had not yet decided whether or not to order a retrial, parliament was already proceeding to declare the regulations valid. I thought they were wrong. In fact I filed an action to stop parliament from debating the bill, which I think was not quite right, but I thought I must, I could find no other course. And of course the speaker would not accept the writ and the matter came to parliament as a protest nothing worse. The retrial of the matter went back to the High Court but by that time appeals to the Privy Council had been abolished and my client was ultimately hanged, along with 25 others who were affected by the Privy Council ruling when the Federal Court upheld the decision of the High Court on retrial.

Bar News: What can Malaysia's experience with the Internal Security Act provide in the way of a warning to Western democracies about governments passing powerful anti-terrorist Acts and Regulations?

Karpal Singh: The Internal Security Act has been abused by the government in that it has been applied to even common criminal and political opponents when it was intended to act as a weapon against subversion. I myself was detained under the Internal Security Act in October 1987 until January 1989 and was placed under oppressive restrictions and conditions until April, 1989. I was re-arrested on my way back home on the orders of the Prime Minister, Dr Mahathir Mohamad, who was then also home minister, despite being released via habeas corpus proceedings in which I represented myself on 9 March 1988 by the High Court. However, my detention was declared unconstitutional by the High Court on 16 November 2001, nearly fourteen years after my initial detention.

Although terrorism is now at its height, requiring extraordinary measures, western democracies should ensure there are built in checks and balances in laws and regulations providing for detention without trial. Such checks and balances are absent in the Malaysian Internal Security Act.¹

Bar News: In Singapore it is commonplace for ministers to sue members of the opposition for defamation. Defamation laws have been used to effectively stifle debate and political opposition. Has the law of defamation been used to similar effect in Malaysia?

Karpal Singh: Unlike Singapore, members of the opposition in Malaysia have seldom been sued for defamation to stifle debate and political opposition. This appears to be a culture peculiar to Singapore. However, in Malaysia, like Singapore, the media is completely controlled by the government to effectively stifle debate and political opposition.

Bar News: As a lawyer trained in the common law, adversarial system, what are your views on the notion of 'Asian values'?

Karpal Singh: Well, Asian values have their parameters. The Malaysian Prime Minister is on record for saying the Westminster model is not suitable for Malaysia. Western liberalism, of course, is at the other end of the spectrum, although human rights are universal and cannot be alien to Asian culture. In the final analysis, it is humanity, of which we all components, which ought be given first priority. I think there can be a happy compromise between Asian and western values, particularly with globalisation.

On Anwar Ibrahim

SMH: Anwar Ibrahim has denounced Malaysia's highest court as a corrupt institution in Mahathir's government after it rejected an appeal against part of his 15 year sentence in what has been a discredited prosecution. How long do you think he will be in gaol?

Karpal Singh: As far as the corruption charges are concerned, he was sentenced to six years in prison and that was in 1999. At the subsequent sodomy trial he was sentenced to nine years that makes it fifteen. If he obtains a remission, he gets ten. It depends whether they allow that or not. He has another seven years to go.

SMH: Are there hopes of an acquittal once Mahathir goes?

Karpal Singh: Well I don't think Anwar Ibrahim should be written off, never. Whether Mahathir goes, or does not go I don't think is the issue. When I go to prison to see my other clients I make it a point to visit him and I find that he has still got that resilience that I think will get him through at the end of it all. You know when the appeal was dismissed by the Federal Court on 10 July. Anwar asked the court for permission to address it and they allowed it. They did not know what he was going to say, but he did make quite a lengthy statement in which he criticised the judiciary.

SMH: Do you think it will be another seven years, or do you think he will get a chance to get out before then?

Karpal Singh: Well, it depends on the turn of events. In Malaysia anything can happen. Even our Prime Minister, Dr Mahathir himself, was expelled from his own party in 1970 for rocking the boat, completely expelled, the very first prime minister ever to be expelled.

SMH: For how long?

Karpal Singh: He was out in the cold for maybe two years, if I am not mistaken.

Bar News: And his UMNO party's registration was actually ruled invalid by the court, wasn't it?

Karpal Singh: That's right, in 1987. And somehow he managed to come back. So anything can happen.

On sedition charges

SMH: Sedition charges were laid against you as a result of the Anwar trial, weren't they?

Karpal Singh: What happened was this, which is ridiculous actually, you don't charge a lawyer for sedition for what he says in submissions in a court of law. It is like immunity in parliament.

What I said was this: on 9 September 1999 in the afternoon, it was after 4.00pm, the court had adjourned. Anwar called me and said 'I want to speak to you, I have a problem'. He said that he had his urine taken secretly and sent to Melbourne and the report showed he had 77 times more than the normal level of arsenic in his body. This was very serious. I asked him what he wanted me to do.

He said: "Can you do something about it?" I said first things first, I think we have got to get you to the hospital, and I'll make the application in the morning. Which I did the next morning and in the course of his submission, what I said was this - it could well



'I don't think Anwar Ibrahim should be written off, never.'

Photo: Jimin Lai / News Image Archive

be that someone out there wishes to get rid of him even to the extent of murder. I suspect - if you look at the words - I suspect people in high places are responsible for this. I did say that, I have never denied that. And so there it was. I didn't think very much of it then, because I said much more than that previously in court and you know nothing happened then, and I never thought anything would happen.

In January 2000 the police said, "we are going to arrest you". I said I don't understand. They said I had committed sedition. I was charged in court and pleaded not guilty. In the meanwhile of course the international pressure came in. Quite a bit from Australia, Britain, Canada, New Zealand and surprisingly even the Federation of Japanese lawyers. Really much more than I thought.

I was charged and the trial went ahead. But down the line the government got worried because they knew what they had done was quite wrong. Then feelers were put out to me, "you apologise" and I said over my dead body. You put me through all this. The president of the Bar Council took me aside and said, "The Attorney General has spoken to me and if you apologise, the charges will be dropped". I said 'As the president it is the last thing you should ask any member to do'.

The matter came up on 14 January this year. I had no inkling that they were going to withdraw. Queen's counsel had come from British Columbia, Australia as well as a few other people. I stood up and told the court that I wished them to be given observer status. The judge said: "No, it is an open court they can come and go as they please". That was wrong, these people came all the way to Malaysia and should be given an opportunity to participate. It was a very important trial, not only for me, but for every lawyer in the Commonwealth, because this was a test case for lawyers

SMH: Was it the international pressure that swayed the Court?

Karpal Singh: Oh yes. The Attorney General said it himself in court, that in view of the representations made internationally by the legal bodies, he did concede that the charge should be withdrawn. The judge then referred me to the disciplinary board for misconduct. I was accused of unprofessional conduct for saying the judge who tried me ought to have been tribunalised for having acted more as a prosecutor in Anwar Ibrahim's corruption trial than as a judge.

I was asked to reply, which I did. I put forward my defence as to why I made the remarks. Then the judge was given my reply to comment upon it. However, he wrote a judgment in which he attacks me, which he sent to the Board, but didn't give me a copy of it. The Board sent me a copy. I thought this was not right and sent the judgment for publishing in the journals. When it came out in the

journals, the judge wrote to the Board and said he wanted to know how his judgment got reported when it was only meant for the Board and nobody else. It was not even meant for me, which I think is the highest form of misconduct for a judge to use his position this way. To get the Board to go for me without even supplying me with a copy of the judgment!

Bar News: How typical is conduct like that of the Malaysian

judiciary?

Karpal Singh: Not all judges are like that. There are of course black sheep in any profession.

Bar News: How would you describe the state of the Malaysian judiciary at present?

Karpal Singh: Weak, I would say weak.

Bar News: Are there judges that you would describe as good?

Karpal Singh: Yes, yes. I must say that there are good judges, on the other hand the judiciary has not been strong enough and I think the executive has been able to cow them, which is wrong.

Bar News: Did the events of 1988 highlight a weakness in the Malaysian Constitution?

Karpal Singh: The events of 1988 related to the assault on the judiciary by the executive, leading to the removal of the head of the judiciary Tun Salleh Abas and two senior Federal Court judges. It showed the might of the government. The Constitution provides for the prime minister to initiate proceedings to remove judges with the setting up of a tribunal for the purpose. Clearly, this impinges on the doctrine of separation of powers and the

The Constitution provides for the prime minister to initiate proceedings to remove judges with the setting up of a tribunal for the purpose. Clearly, this impinges on the doctrine of separation of powers and the independence of the judiciary.



The NSW Bar Association: 25 July 2002.

independence of the judiciary. The executive should never be clothed with such power, which has far reaching consequences and implications. In my view the Malaysian Constitution should be amended to take away such power from the prime minister. It should be parliament which should decide on the removal of judges from office, to ensure their independence and security of tenure. The removal should be after the verdict of a two-thirds majority in parliament and after a reasonable opportunity to be heard on the part of the judge concerned.

Recent cases

SMH: Earlier this year you found yourself at the centre of another politically contentious case. You represented the parents of some Muslim girls who were prevented by the Singapore school system from wearing a Muslim headscarf. What happened since then?

Karpal Singh: The ruling was enforced in the school which they attended that they could not attend unless they took off their

scarves. It is known as the Tudung

SMH: How does Islamic law effect the common law framework in which you practice?

Karpal Singh: Well I don't think there is a question of religion at all here in the sense that the girls have a constitutional right: freedom of religion. The Government of Singapore may say it is not religion, that it is an issue of culture. Let it be. Even if it is culture, it has been there all the time.

SMH: The Singapore Constitution does recognise their religion?

Karpal Singh: But of course the argument would be, it is not religion. What is important to note is that it could amount to discrimination because Sikh boys in Singapore are allowed to put on the turban. And Singapore's response in the case of the Sikh boys has been that when the British were there they were allowed to wear turbans. My answer to that is very simple when the British were there they allowed the Tudung too. And in England Muslim girls are allowed to put on the Tudung. In England a Sikh boy was prohibited from putting on the turban in school, he took his case right up to the House of Lords and they decided that he had the right to put on a turban at school. In Canada, a Canadian Mountie who was a Sikh put on a turban but he was requested by his superiors to remove the turban when on duty, which he refused. He took the matter to a court, which held that he had the right, and nobody could stop him from doing that.

SMH: So why is the government pursuing this case when it has become very high profile?

Karpal Singh: It possibly has something to do with September 11, but I do not know. If that were the reason, then it would be wrong.

SMH: Also earlier this month Dr Mahathir urged Muslim nations to empower themselves with modern knowledge and to develop weapons to defend themselves. I understand he faces a big political challenge from a fundamentalist party that wants to declare a hardline Islamic state and to impose harsh laws on the country's population including non-Muslim minorities, that would punish adultery and slaying and death with amputation. What are your views?

Karpal Singh: The Islamic party is saying, and has always said that if they come into power they are going to declare Malaysia an Islamic state and also set up an Islamic government. Our

Constitution is very clear. Article 3 of the federal Constitution makes Malaysia a secular state. It says Islam is a religion of the Federation, but all other religions can be practiced in peace and harmony in the Federation. But Islam is the most widely practised religion in the country. There was a supreme court case which held in effect that Malaysia is a secular state.

If there is anyone to blame it is Mahathir for the predicament that is being caused in the country. On 29 September last year he said: "Malaysia is already an Islamic state". A few months ago he said "It is not really an Islamic state, it is a fundamentalist Islamic state". It is the only occasion I have seen a Prime Minister declaring the country to be something which the constitution says otherwise. Now what is happening is, this Islamic party is saying this, OK if it is already an Islamic state then there should be Islamic law, why are they complaining! See if at all it is the Prime

Minister to blame for having made that statement.

Bar News: Has his position on that changed since September last year? That is when he made that statement?

Karpal Singh: His position has not changed. In fact, he has made his statements well after September 11.

Bar News: Didn't those comments coincide with a by-election in Terengganu?

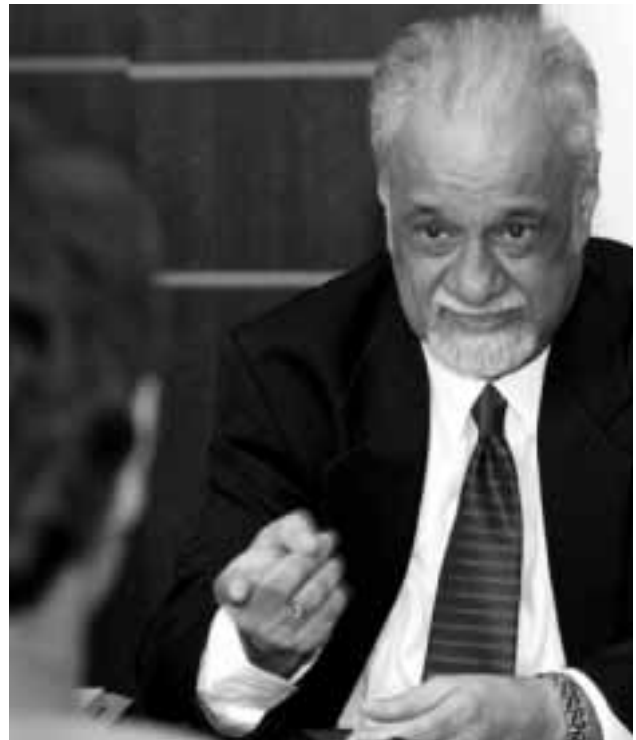
Karpal Singh: No, no. There was a by-election, in fact the President of the Islamic party passed away about two months ago. So there was a by-election, in fact two by-elections, because he was holding two seats, a federal and a state seat in the State of Kedah which happens to be the Prime Minister's home state. In fact, the results were just announced last week. The Islamic party won one of the seats, the state seat. The government won the other one but just by 283 votes, it was very close for a by-election.

SMH: Are you a practising Muslim?

Karpal Singh: No, no, I am a Sikh.

SMH: Can you talk a bit about what sort of impact September 11 has had at all on the Muslim community in general.

Karpal Singh: Of course the ruling party is exploiting that. It



All questions firmly dispatched to the boundary.

is the fear element and I think that to a certain extent is being used for the purpose of galvanising support for the ruling party, which to me is wrong and most unfortunate.

The Bar in Malaysia

Bar News: Is there a distinction between solicitors and advocates in Malaysia?

Karpal Singh: We are known as advocates and solicitors. So there is the option to sort of do both. It is a fused profession.

Bar News: Has your role always been as an advocate?

Karpal Singh: Principally that of an advocate, yes.

Bar News: Can foreigners, principally Australians, practice law in Malaysia?

Karpal Singh: Foreign lawyers, including those from Australia, cannot practice in Malaysia unless they acquire

The perils surrounding legal practice, although daunting, gives the challenge added significance and meaning. There is nothing like taking on a case with an element of challenge in it.

citizenship or permanent residence and have been called to the Malaysian Bar. However, eminent Queen's counsel or senior practitioners can apply for ad hoc admission to the High Court to represent clients in a particular case. The Court has discretion to allow such applications. However, such applications are allowed only in exceptional cases.

Bar News: Are Australian judgments viewed as being authoritative in Malaysia? If so, are there any areas of law that are particularly well respected in Malaysia?

Karpal Singh: Australian judgments, particularly in land law, are useful in Malaysia in view of the Torrens System, which is used in both countries. They are of significant persuasive value and are well respected in Malaysian courts.

Bar News: Can I ask you about the Bar in Malaysia. I read in one of your papers there is a proposal to introduce something described as the Academy of Law.

Karpal Singh: That is right. I think the idea is to of course dilute the powers of the Bar Council because the government finds the Bar Council is a thorn in its side.

Bar News: Can you explain briefly what the proposal is and how you perceive it to be a threat to the independence of the Bar in Malaysia?

Karpal Singh: For the moment I think it is only for academic purposes and so forth. It will be a body which will not only be confined to practicing lawyers, but includes lecturers and others.

Bar News: Is it a proposal that you will have to be a member of that to be a practicing lawyer?

Karpal Singh: Later on yes.

Bar News: And who will control membership, the government?

Karpal Singh: The Bar Council is represented on it but its powers will be diluted to a great extent as membership will be open to others. The government obviously does not want to have a strong Bar. The government has never like the Bar in Malaysia.

Bar News: Is there a widespread feeling amongst the Bar in Malaysia that that is a threat to their independence as far as you are aware?

Karpal Singh: Yes.²

Bar News: What are some of the other means by which the Government and the judges 'silence' the legal profession?

Karpal Singh: Principally, it has been a resort to contempt proceedings or the threat of it, that has been used to silence the legal profession. But there are other ways. In 1977, when I embarked upon a campaign against the draconian Essential Security Cases Regulations, the government amended the law to prohibit for state assemblymen and members of parliament from holding office in the Bar Council. I was then a state assemblyman and found myself legislated out of the Bar Council of which I was an elected member!

Bar News: The other topic I wanted to ask you about is the independence of prosecutors from the government. Who prosecutes criminal offenders in Malaysia?

Karpal Singh: The Attorney General is also the public prosecutor and also the legal adviser to the government. So the prosecution is not independent from the government. The government's influence in terms of prosecutions is, therefore, obvious, although under the Constitution the public prosecution is vested with the discretion of whether or not to initiate or discontinue a trial.

Bar News: But there is no independent director of public

prosecutions?

Karpal Singh: There isn't.

The cost of his commitment

Bar News: How has your family coped with your commitment to human rights?

Karpal Singh: My family has been a source of strength in my commitment to human rights. It has certainly taken a toll on them, particularly during my detention under the Internal Security Act. Perhaps, the experience is the cause of four of my children taking up law and joining me in practice with the youngest, in all likelihood, also following suit. My wife, of course, must take the lion's share of the credit for having stuck by me through the turbulence in trying times. Many a time, I had to order my family to put on their seat belts!

Bar News: It's interesting you should mention your children entering the legal profession. Given that there are occasionally perils associated with the practice of law in Malaysia, did you ever consider telling them to become engineers or doctors instead?

Karpal Singh: I have left the option of profession to my children although I did encourage my daughter to take up law instead of Arts. The perils surrounding legal practice, although daunting, give the challenge added significance and meaning. There is nothing like taking on a case with an element of challenge in it.

Bar News: Finally, will you be writing your memoirs?

Karpal Singh: I hope to write my memoirs one day, time permitting. Mr Tim Donoghue of New Zealand has prepared the manuscript of a book on my life and is thinking of an appropriate title to the book, which should be out next year.

1 Since conducting the interview, the Federal Court of Malaysia, on 6 September, held that police arrest upon which ministerial detention of some political activists was based was unlawful. Despite this, the Court refused to make a consequential order that the continuing detention was unlawful and releases of those affected were in order.

2 Since the time of the interview, the Academy of Law Bill has been shelved
