Malaysia is a country proud of its multireligious, multiethnic and multicultural characters. Religious freedom is an important aspect of this democratic nation and freedom of religion is one of the fundamental liberties guaranteed and protected by the Federal Constitution. Respect and understanding are vital in preserving peace and harmony between the people of various races and religions living in the country.

Article 11 of the Federal Constitution proclaims that every person has the right to profess, to practise and to propagate his religion. This right can be claimed by anybody irrespective of religion, citizenship, gender, ethnic group, or others. However, the sanctity of religion has been undermined by groups of people who seem to have vile intentions. Not only have these people diluted the truth, but they also have created chaos and violence under the guise of religion. This has become a major global problem and Malaysia has not been spared.
In Malaysia, initially religious extremism originated from deviant teachings whereby religion was used as a means to propagate mistrust among the populace and to undermine the democratically elected government. This was a result of misinterpretation of the Islamic faith according to the ideologies of some interest groups. Islam the religion is not the cause of terrorism. Islam is a religion of peace. However through the centuries, deviations from the true teachings of Islam take place. And so Muslims kill despite the injunction of their religion against killing especially of innocent people. Extremism stems from those with an uncompromising mindset with regards to their beliefs and convictions which pose as a threat to the nation. If efforts are not taken to wean these groups off extremism, they would degenerate into terrorists and strike blindly without regard for the life of the innocent and disrupt the peace and stability of the country.

There have been many incidents of such nature which have occurred. On July 7, 1979 an individual claiming to be Imam Mahdi had attacked and injured an imam at a mosque. In another incident serious acts of violence had been committed on Thursday 16 October 1980, when a group of heretical followers of another person claiming to be Imam Mahdi, attacked a police station. Confrontation involving armed military personnel and citizens during the Memali tragedy of November 1985 and Al-Ma’unah incident in July 2000 involved fatalities on both sides. These are examples of armed violence that were driven by the deviant teaching and radical ideology of local Islamic groups in the country.
Religious extremism and terrorism are becoming ever increasingly worrying and more difficult to contain because terrorist movements have gone beyond national boundaries, are highly organized, well financed and more sophisticated and advanced in terms of communication, strategy, and weaponry.

As admitted by the former Deputy Prime Minister of Malaysia in 2016, who at that time was also the Minister of Home Affairs, since 2013 the Islamic State (IS) militancy or Daesh has become the fastest growing threat to Malaysia. The group is extremely dangerous because it espouses views and teachings that promotes the takfiri ideology.

Takfiri ideology is characterized by harsh literalist interpretations of Islam, which pronounce apostasy and disbelief against Muslims who espouse differing interpretations on religious matters, thus justifying the shedding of their blood. The ideology legitimized the murder of Muslims and other religious groups who oppose them.

The jihadist Salafism and Wahhabism led to the formation of numerous local religious extremist cells. These extremists’ groups shared a common goal namely to topple down the government and demanded the creation of the administrative body that would be fully aligned with their own versions of Islam. The goal is in consonance with various statements and fatwas issued by some leaders of the groups that Muslims must refrain from voting and taking part in democratic political elections. They declare that these activities are forbidden (haram) for Muslims to participate. Thus, although Malaysia is a country that has Syariah laws and courts such extremists’ groups still commits acts of violence and cause destruction to the society in the country.

In fact, the reality is, as correctly observed by Anthony H. Cordesman, that globally that most extremist and terrorist violence occurs in Muslim states. The violence overwhelmingly consists of attacks by Muslim extremists on fellow Muslims, and not a clash between civilizations.
The war against terrorism must not jeopardize exercise of legitimate rights of the people. The judiciary has to carry out its obligations to protect the people, and at the same time guarantee freedom and dispense justice. It is the constitutional duty of the Islamic religious authorities to preserve the religion, to safeguard Muslims and insulate the true teachings of Islam in Malaysia.

Under the federal constitutional framework of the country, the civil courts and federal government do not deal with religious matters because it comes under the jurisdiction of Syariah laws and courts of the individual states. However, to combat religious extremism and terrorism under the pretext of Islam, the demarcation of constitutional power and jurisdiction between federal and state governments is obscured.

The federal government which has exclusive legislative and executive powers over criminal matters, public order and security must collaborate with the Islamic religious authorities of the states in encountering threats coming from religious extremists and terrorists’ groups.

Although laws, policies, and agencies relating to internal security, public order and crime are under the jurisdiction of the federal government, the ideological, theological, and philosophical dimensions of religious extremism and terrorism have to be dealt with by the Islamic religious authorities of the states.
Article 11 of the Federal Constitution guaranteed the right to every person, including permanent residents, migrant workers, tourists, international students, asylum seekers and refugees, to religion.

Religious rights guaranteed under the constitution do not only apply to individual and personal capacities, but it also covers religious groups. The constitution protects the rights of any religious group to manage its own religious affairs. All religious groups have the constitutional rights to establish and maintain institutions for religious or charitable purposes. Rights to property are also guaranteed because it is stated that every religious group has the right to acquire and own property and hold and administer it.

Freedom of religion had been upheld by the courts in several cases such as Jamaluddin bin Othman v Menteri Hal Ehwal Dalam Negeri, Malaysia & Anor and Minister for Home Affairs v Jamaluddin.

Both the High Court and the Supreme Court in the said cases have maintained the right of the person to practise and propagate Christianity. Notwithstanding that under s 8(1) of the Internal Security Act 1980 (which has now been repealed), the Home Minister was given powers to detain a person to prevent him from ‘acting in any manner’ prejudicial to the security of Malaysia, the Minister has no power to deprive a person of his right to profess and practise his religion which is guaranteed under art. 11 of the Constitution.

Religion is a nourishment to the soul. It brings peace to the mind and fulfils one’s spiritual needs. It is meant to create peaceful way of life for human beings. Religion creates peace between a person and his creator, and it also creates harmony between a person with the nature and his surroundings. It also has the objective of establishing a peaceful environment for the society.

Accordingly, the Federal Constitution of Malaysia does not authorize any act contrary to any general law relating to public order, public health, or morality. The express limitation of religious rights can be found in Article 11(5). In other words, religious rights guaranteed by the Constitution cannot be abused to disrupt public order. Any action even those associated with any religion may be limited if it endangers public health and undermine morality of the public.

‘The freedom to profess and practise one's religion should not be turned into a licence to commit unlawful acts or acts tending to prejudice or threaten the security of the country’.
The civil court on a few occasions had faced the challenging tasks of upholding rights of those accused of religious terrorism while at the same time preserving public order, peace, and security of the country.

The right to practice religion has been restricted by the courts on various occasions on the basis whether or not the action or practice is required or obligatory under that religion. It appears that only an action or practice which been classified as obligatory is certain to be protected by Article 11.

THE ISLAMIC RELIGIOUS AUTHORITIES
FEDERATION OF MALAYSIA
Federal System of Government
Division of Powers Between Federal Government and State Government

| Federal Government                                      | State Government                                      |
|----------------------------------------------------------|--------------------------------------------------------|
| List 1 and List 3 of the 9th Schedule                    | Article 74(2)                                          |
| -Federal Jurisdiction-                                  | List 2 and List 3 of the 9th Schedule                  |
| Security, Public Order, Criminal Law, Defense            | -State Jurisdiction-                                   |
|                                                          | Islamic Law, Muslim Affairs                            |

Jurisdiction of the States

*Mamat Bin Daud & Ors v Government of Malaysia [1988] 1 MLJ 119*

Protecting the Truth
Ideological Offences - Soft Approach
Prevention and Correction of Misinformation

*Tauliah*

*Fathul Bari bin Mat Jahya & Anor v Majlis Agama Islam Negeri Sembilan & Ors [2012] 4 MLJ 281*

*Fatwa*

*Sulaiman bin Takrib v Kerajaan Negeri Terengganu 2009] 6 MLJ 354.*
The Courts

Cases relating to Religious Extremism and Terrorism

Minister for Home Affairs v Jamaluddin

The freedom to profess and practise one's religion should not be turned into a license to commit unlawful acts or acts tending to prejudice or threaten the security of the country. The protection conferred by Article 11 of the Constitution cannot be a complete umbrella for all actions.

Mamat bin Daud & Ors v Government

The article which provides for freedom of religion does not authorise any act contrary to any general law relating to public order, public health or morality.

| Federal Government |
|--------------------|
| Federal Jurisdiction – Security, Public Order, Criminal Law, Defense |
| Federal Laws |

- Internal Security Act (ISA) 1960
- Security Offences (Special Measures) (SOSMA) 2012
- Prevention of Terrorism Act (POTA) 2015
- Special Measures Against Terrorism in Foreign Countries (SMATA) 2015
- Anti-Money Laundering and Anti-Terrorism Financing and Proceeds of Unlawful Activities (AMLATFPUA)
- Penal Code
- Prevention of Crime Act (POCA) 1959
- Federal Government

- Security, Public Order, Criminal Law, Defense

- Federal Jurisdiction

- Internal Security Act (ISA) 1960
- Security Offences (Special Measures) (SOSMA) 2012
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- Penal Code
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- Federal Government

- Federal Jurisdiction

- Security, Public Order, Criminal Law, Defense

- Federal Government
The Internal Security Act 1960

Ahmad Yani bin Ismail & Anor v Inspector General of Police & Ors
MLJ [2005] 4 MLJ 636

Abdul Razak bin Baharudin & Ors v Ketua Polis Negara & Ors
[2004] 7 MLJ 267

Penal Code

Mohd. Nasuha bin Abdul Razak v Pendakwa Raya [2020] 3 MLJ 530
Mustazza bin Abdul Rahman v Public Prosecutor [2021] 1 MLJ 230
Pendakwa Raya Iwn Anuar bin AB Rawi [2016] MLJU 533
Pendakwa Raya Iwn Tengku Shukri bin Che Engku Hashim [2018] 8 MLJ 645
Public Prosecutor v Asroy bin Achoi [2018] 9 MLJ 702
Public Prosecutor v Razis bin Awang [2020] MLJU 132
Public Prosecutor v Wan Mohamad Nur Firdaus bin Abd Wahab and other appeal [2019] 4 MLJ 692
Pendakwa Raya Iwn Siti Noor Aishah bt Atam [2017] 7 MLJ 461
CONCLUSION

The use of military capabilities, enforcement of the laws, and prosecution in the courts can cause physical damage to terrorist organizations and stifle their activities. However the ideology underpinning the terror would remain intact. Deradicalization measures and countering/preventing violent extremism which aims at tackling the ideological roots of terrorism are considered highly effective in dealing with the ideological problem. The holistic approach provides commensurate measures and proportionate reaction to terrorism related activities.

The ever-increasing threat by religious extremists and terrorist groups requires the enforcement agencies to step up their efforts to protect the society and nation. At the same time the authorities need to be vigilant and more tolerant in dealing with cases of ideological offences so as not to impede lawful exercise of rights to free speech and expression, and legitimate religious rights.

The enforcement agencies, together with the courts and Islamic religious authorities must work in tandem to defeat not only terrorist organizations but its ideology as well. To counter the terrorists’ threats and to combat the spreading of the dangerous extremists’ ideologies the court and the Islamic religious authorities need to cooperate. Only then the fight against religious extremism and terrorism in Malaysia is sustainable and effective.