

## CULTURAL ISSUES AND CRIME

### I INTRODUCTION

#### A Scope of Paper

This paper\* examines the criminal justice system of Singapore and its criminal laws to determine their suitability to a society that from its founding had been multi-racial, multi-religious, and multicultural in character. It is not a sociological study of the incidence and causes of crime in Singapore or of their linkage to racial groups.<sup>1</sup>

2 In this paper, the word “culture”<sup>2</sup> is used to refer generally to the way of life of any ethnic community, as determined or influenced by its language, religious beliefs and practices, customs or even its food. In the words of a Japanese scholar, Dr Heita Kawakatsu, culture is:

“the means by which people conduct their lives, or, in other words, manner of living. Most visible and what set us apart is the type of food we eat, the clothing that we prefer to wear, and the types of

\* This paper, slightly revised, was presented at the Heads of Prosecution Agencies Conference held in Fiji, 13–16 Oct 1999.

1 In *The Growth of Crime, the International Experience* (1977) at p 23, Sir Leon Radzinowicz observed “To enter into open discussion of links between race and crime is to enter a minefield. Politically, the issue is dynamite.” Time and globalisation have not changed the force of this observation. The published statistics on crime rates in Singapore do not provide any breakdown of the data by race. However, for drug abuse, such data is published to demonstrate the gravity of the problem vis-à-vis a particular community so that its leaders may take remedial measures to it.

2 “Culture” is a protean word. In *Culture: A Critical Review of Concepts and Definitions* (1952), U.S anthropologists, A.L. Kroeber and C. Kluckhohn, cited 164 definitions of culture, ranging from “learned behaviour”, “ideas in the mind”, “a statistical fiction” to “a psychic defence mechanism”: **Encyclopaedia Britannica** 15 ed at p 512.

In *The Closing of the American Mind* (1987) at p 187, Allan Bloom refers to the Kantian sense of culture as being “*the unity of man’s brutish nature and all the arts and sciences he acquired in his movement from the state of nature to civil society. The link is that culture is what makes possible, at a high level, the rich social life that constitutes a people, their customs, styles, tastes, festivals, rituals, gods - all that binds individuals into a group with roots. A culture is a work of art, of which the fine arts are the sublime expression.*”

Bloom also refers to two current uses of the word “culture” that, while distinct, are related: “*First, culture is almost identical with people or nation, as in French culture, German culture, Iranian culture, etc. Second, culture refers to art, music, literature, educational television, certain kinds of movies - in short, everything that is uplifting and edifying, as opposed to commerce.*”

But the world of commerce also has a culture. A leader in the *Times* of 3 July 1999 read: “*Laws reflect cultures. British bankruptcy laws are rooted in a culture of retribution. They were introduced to help creditors recover their money. For centuries, bankrupts languished in debtors’ prisons, where they might contemplate their fecklessness. One of America’s attractions, therefore, was the absence of this culture. Bankruptcy was the warp and weft of a dynamic, capitalist society. American law reflects the wish to help ruined businessmen pick themselves up, dust themselves off and start all over again.*”

dwellings we live in. On the next plane – and less visible – are our religious beliefs and values. Really our differences are one of degree. Because of this no single culture can be regarded as superior or inferior to another.”<sup>3</sup>

### *Western imperialism and cultural divides*

3 Race, language and religion have been and will continue to be the great divides in societies and nations throughout human history. ‘Tribal’ differences or conflicts are likely to be with us till the end of time unless the human race is able to attain a higher order of existence which is able to assimilate and homogenise all such differences. In recent times, a contributory factor to the formation of political entities (or nations) that have been burdened with these ethnic divides was the expansion of Western imperialism from the 18th century onwards. ‘Native’ territories were carved up by the more powerful Western powers to create settlements, protectorates and vassal states with geographical boundaries that separated whole native peoples or tribes that were culturally homogeneous. The British imperial power built an empire “where the sun never sets”. The expansion of British imperial power was initially based, as were other Western imperial powers, on trade, and later on the economic exploitation of these territories. Trade and economic development led to huge immigration flows from poor and over-populated countries such as China and India, part voluntary, part indentured and part shanghaied, to take advantage of the economic opportunities provided by such developments.<sup>4</sup>

### *Evolution of cultural diversity in Singapore*

4 When Thomas Raffles established a ‘factory’ in Singapore in 1819 on behalf of the East India Company (“EIC”) for the purpose of increasing trade for the EIC, there was a small settlement of about 150 people along the banks of the Singapore river and some 30 Chinese engaged in pepper and gambier planting. The trading post took off immediately and began to attract foreign traders and workers from the poor countries in the region, especially the Chinese from Penang, Malacca and China. By 1824 when Singapore was ceded to the EIC in perpetuity, the population was

3 ASIA 21, July 1999 *Garden Island*, at p 56. Dr Kawakatsu says in his article that if an ethnic group can be defined as a people who share a common culture, then there are some 3,000 ethnic groups worldwide. There are very few modern societies which are not multi-racial, multi-religious and multi-linguistic in character, even though many of them share a large degree of homogeneity in social, political and other values, such as liberalism, democracy, human rights, and multicultural tolerance.

4 Lynn Pan has given a good account of the Chinese diaspora in her book “*Sons of the Yellow Emperor*”.

10,683 (Malays 60%, Chinese 31%, Indians 7% and Others 2%). It was by then a multi-ethnic, multi-religious and a multicultural society.<sup>5</sup> By 1867, the Chinese community had reached 65% of the population, numbering 55,000. The Chinese and the Indians were not immigrants but sojourners, with an eye to going back to their homelands after they have made some money. But, eventually by force of circumstances, they settled down with their families and transformed Singapore into a permanent multi-racial society.<sup>6</sup>

### *Reception of English law and common law values in Singapore*

5 Between 1819 and 1826, English law applied to the English traders living in the factory and the native laws applied to the native inhabitants outside the factory.<sup>7</sup> English law (statutes and common law) as it stood then was formally received as the law of Singapore on 27 November 1826 by virtue of the Second Charter of Justice but its application was subject to local circumstances. The courts have held that English “statutes relating to matters and exigencies peculiar to the local conditions of England, and which are not adapted to circumstances of [Singapore], do not become part of Singapore law, although the general law of England may be introduced into it.”<sup>8</sup>

6 Between 1826 and 1872, English criminal law<sup>9</sup> applied to all the inhabitants of Singapore as supplemented by local legislation. Criminal

5 The **Singapore 1999** (the official yearbook) at page 34. The population in 1998 was 3,865,600 (Malays–14%, Chinese–77%, Indians–7.6% and Other races–2%). Braddell wrote in **One Hundred Years of Singapore** (1921): “When the Settlements of Penang and Singapore were occupied by the British the only existing population was Malay, consisting of a few families at each place, and subsisting on fishing and piracy; there were no settled institutions, and the places were virtually unoccupied.”

6 Fiji, our host for this Conference, like Singapore, is also a multi-racial and multi-religious society as a result of British imperialism. It was ceded to the British in 1874 and became a crown colony. To make the economy self-sufficient, indentured labour was imported from India to work the copra, cotton and sugar plantations. Today, it is made up of indigenous Fijians, immigrant Indians, Chinese, Europeans and part-Europeans, and amongst whom are believers in Christianity, Hinduism, Sikhism, Islam and other religions.

7 Professor G Bartholomew, the foremost authority on the legal history of Singapore, wrote in his article **English Statutes in Singapore Courts** (1991) Singapore Academy of Law Journal 1 as follows: “*the reality was doubtless rather different. It seems reasonable to assume that for the first few years of its existence the factory lived in something akin to a state of nature.*”

8 *Ong Cheng Neo v Yeap Cheng Neo* (1874–5) 6 LRPC 381.

9 *In Re Native Witnesses* (1840) 4 Kyshe 15, Chinese witnesses were allowed to make simple affirmation in the courts of the Straits Settlements although Indian Act No V of 1940 (which was then applicable) provided that

“every individual of Hindoo and Mohamedan persuasion shall make affirmation to the following effect: I solemnly affirm, in the presence of Almighty God, that what I shall state shall be the truth, the whole truth and nothing but the truth”.

The court held that when “The Charter...enjoins, as to native witnesses, the administration of” such oath in such manner and form, as the Court shall esteem most

procedure was based on Indian legislation which itself was partly based on English criminal practice. These laws reflected the culture of the colonising power and not the cultures of the colonised. The role of the judges in modifying these laws to accommodate their cultural practices was limited, even if they were minded to do so. There is no recorded decision of any criminal case in which the law had been modified to suit local circumstances. Indeed, in order to maintain public order, the legislature enacted many laws to contain the excesses of cultural practices.<sup>10</sup>

7 The Penal Code was enacted in 1872. It was based on the Indian Penal Code which represented Macaulay's to clarify and codify the principles of English criminal law.<sup>11</sup> The principles of English criminal law were based largely on Judaeo-Christian values and principles of morality. The Indian Penal Code contained a few modifications to English criminal law to suit the circumstances of India.<sup>12</sup> The Penal Code was a

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binding on their consciences respectively", it was concerned with *effect*, not *form*, — the *binding* of the witness's conscience not the *mode* of binding it; and if that end be equally attainable by a solemn affirmation as by an oath, the intent and meaning of the Charter is equally attainable by the adoption of either mode, such as "by the water of the Ganges, the Koran, or the Cabalistical inscriptions.""

- 10 For example, in 1870 the Preservation of the Peace Ordinance was enacted. The Common Gaming Houses Ordinance was also enacted in the same year to suppress common gaming houses and lotteries at a time when gambling could have been a cultural practice of the Chinese. Ordinance No XVIII of 1870 also curtailed cultural diversity by criminalising the beating in any house or place within 4 miles of the Chief Police Office of any drum, gong or tom-tom or perform any music or make any noise calculated to be an annoyance to the public or any of the neighbours, unless a licence was obtained from the police for the performance of music on the occasions of any festival or ceremonies. This law affected Chinese funeral processions which were traditionally very noisy affairs as they had band music and hired wailing. The 1870 law is now incorporated into s 14 of the Miscellaneous Offences (Public Order and Nuisance) Act (Cap. 184) which prohibits the making of excessive noise. It is not the practice for the police to prosecute for noisy activities such as religious ceremonies, e.g. amplified calls of the muezzin to prayers or Chinese funerals, because of their cultural significance.
- 11 See J F Stephens *A History of the Criminal Law of England* (1883) Vol III 298–323. For a contrary view, see M Sornarajah: *The Definition of Murder under the Penal Code* [1994] SJLS 1, 6–7, 9.
- 12 Such as offences relating to religion (Chapter XV), s 497 which made adultery an offence, a s 508 on the offence of intimidation. However, s 92 of the Penal Code provides a general defence for any harm to a person done in good faith for his benefit where he is unable to consent. This section would provide a defence to the practice of medical circumcision of male infants and, conceivably, to the practice of non-medical circumcision of male infants among the Jews and Muslims. However, to date, there has been no prosecution of such practices even where the circumcision had been botched and the infant had to be medically treated. It is likely that s 92 would not provide a defence to female genital mutilation. However, there has been no prosecution of this practice in Singapore. See also M Sornarajah's article in note 11 for other differences.

local (Singapore) statute and not an English statute, the condition of the Second Charter of Justice that English law must be applied to suit local circumstances also ceased to apply. Thus, *sati* (the rite of widow-burning among Hindus, especially the Rajputs) was made illegal.<sup>13</sup> So were bigamous marriages,<sup>14</sup> including polyandry.<sup>15</sup> However, some colonial judges must have been sensitive to the cultural traditions and practices of the people who were then living in Singapore. In one reported case, the court appeared to have gone out of its way to make it difficult for the prosecution to prove a charge of bigamy against a Chinese defendant.<sup>16</sup>

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S 88 provides a general defence for any harm, not intended to cause death, done to any person with his consent, and for whose benefit it is done in good faith. This section is a defence to the practice of Hindus to allow parts of their bodies to be pierced with skewers, rods, etc. for the Thaipusam ceremony. On a similar footing could be the annual Hindu fire walking ceremony should a participant be injured. It is not clear whether s 88 could provide a defence to the kind of sado-masochistic bodily injury that the defendants inflicted upon themselves in *R v Brown* [1993] 3 LRC 707.

13 For a historical account, see Hobson-Jobson: *A Collection of Colloquial Anglo-Indian Words and Phrases* (1886). The practice has not died out entirely. For an interesting account of a *sati* which took place in 1987 and its social, economic, religious and political ramifications, see Mark Tully's account of the Deorala *sati* in his book *No Full Stops For India* (Penguin 1992, Chapter 7).

14 Customary marriages entered into by the Chinese were polygamous in nature and did not constitute the offence of bigamy as defined in s 494 of the Penal Code. In 1961, the Women's Charter abolished all polygamous marriages and made all marriages in Singapore, except Muslim marriages, monogamous.

15 *R v Rabia* (1889) 4 Kyshe 513. The Second Charter of Justice 1826 required the courts to administer the law with due regard to the religion, manners and customs of the native inhabitants. The Penal Code 1872 made bigamy an offence. The accused, a Muslim woman, was convicted of bigamy for marrying another man when her first marriage was subsisting. The Straits Settlements Court of Appeal affirmed the conviction, holding that polyandry was not part of Muslim religion, usage or custom and therefore the Second Charter did not prevent the court from applying s 494 Penal Code to her. The CA also held that the section applied to all persons.

16 *R v Yeo Boon Leng* (1890) 4 Kyshe 630. The accused was charged for bigamy for marrying again during the lifetime of the first wife. The prosecution had to prove that under the personal law of the accused, the second marriage was void because of the subsistence of the first marriage. The prosecution's expert who testified on Chinese law was discredited when he acknowledged that there were cases of Straits Chinese having two wives and that he himself had two wives.

The prosecution then called a Frenchman, who had been an Assistant Protector of Chinese in Penang, to testify on Chinese law. The court ruled that it could not accept him as an expert unless he had not only studied Chinese law but had also practised or administered it. The court allowed him to testify that certain books referred to by the prosecution were published with authority of the Chinese Government, but found against the prosecution on this point.

The case was then adjourned to allow the prosecution to call an expert, in view of the great importance of the case. At the resumed trial, the prosecution tendered certain Chinese law books provided by the Chinese Consul in Singapore as evidence of the law in China. The court declined to admit the books in evidence.

The prosecution then contended that as the court had neither evidence of Chinese custom nor law before it, and that as it was prepared to prove the two marriages, it was for the accused to show he had the right to contract the second marriage and that it was not void. The court rejected this argument on the ground that the onus was on the prosecution to prove that the second marriage was void.

8 The necessity of imposing English criminal law to all and sundry was not at all surprising. Britain was the imperial power. It had founded a new colony to promote trade, for which it had to provide a legal system to enforce the law. Singapore was then virgin territory. The population was made up largely of recent immigrants, mostly uneducated or illiterate and poor, who spoke different languages, practised different religions and observed different cultural norms. English criminal law and justice with strict moral principles and values was superior and also, in many ways, a more enlightened law than what the local inhabitants had been used to in their countries of origin. For example, s 377 of the Penal Code (Cap. 224) makes it an offence for any person to have carnal intercourse against the order of nature with any man, woman or animal. This was also the law in England in 1872.<sup>17</sup>

9 Between 1873 and 1888, several statutes on criminal procedure were enacted to update the existing criminal procedure to be consistent with the Penal Code which abolished the distinction between felonies and misdemeanours. The current Criminal Procedure Code (Cap. 68) was enacted in 1900. In 1893, the English law of evidence was consolidated as the Evidence Ordinance (Ord. 3 of 1893). Section 2(2) of that Ordinance provided that all rules of evidence not contained in any written law, so far as such rules are inconsistent with any of the provisions of the Ordinance, were repealed.

10 These three statutes on criminal justice remain in force in Singapore in substantially the same form as when they were introduced. Their fundamental moral standards and values remain valid.<sup>18</sup> New offences and new procedures to deal with social and other problems in connection with multiculturalism have been introduced since independence. But generally it is true to say that in the case of Singapore, the policy considerations of the imperial power have long ago laid the foundations of its criminal laws and criminal justice system. The cultural traditions and practices of the various immigrant communities were not recognised with any degree of indulgence by the imperial power when they came into conflict with the underlying moral and social imperatives of the common law, especially in the area of criminal law.

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The prosecution finally asked that issues of onus and admissibility of the Chinese books be reserved to the Court of Appeal. This was also rejected.

<sup>17</sup> In *R v Esop* (1836) 173 ER 203, the accused, a native of Baghdad, was indicted for an unnatural offence committed on board an East India ship, lying in St Katherine's Docks. What he did was not an offence in Baghdad. The court rejected this defence, but held that it was a matter to be considered in mitigation.

<sup>18</sup> The Penal Code was an Indian statute enacted to deal with a society that was also a multi-racial, multi-religious and multi-lingual society. It contains a central core of criminal law which sets standards of conduct which were then, and are still, widely accepted by the people.

## B Multiculturalism and Criminal law

### *Issues*

11 This paper examines three main issues on the relationship between multiculturalism and the criminal law in Singapore today:

- (a) the continuing imperative that there be racial and religious harmony<sup>19</sup> to enable the various communities to forge a common national identity and share a common destiny, whilst at the same time respecting the cultural norms of each community;
- (b) whether the existing criminal laws are adequate to support multiculturalism and protect minority groups or cultures from the harmful actions of another, usually the dominant cultural group; and
- (c) whether the existing criminal laws and procedures are adequate to take into account cultural factors in determining criminal liability or imposing punishment on offenders.

12 The first issue highlights the nation-building problems of a small multi-racial nation state, with a small land area and no economic resources, trying to forge a national identity out of a diverse community of different racial groups, each having its own language and religion. Singapore became a sovereign and independent state in 1965 in circumstances that make it imperative for its different ethnic and religious groups to learn to live in peaceful co-existence if it were to survive and progress as a nation.<sup>20</sup> Singapore as a state suffers from a degree of political and social vulnerability which larger states with substantial natural resources have difficulty in understanding.

13 The question also assumes the reality of a multi-racial and multi-cultural society in which there is a system of criminal law and justice whose principles are consonant with the core or shared values of the

<sup>19</sup> Racial relations continue to be a very sensitive issue in Singapore even after 34 years of independence. The Straits Times, 30.9.99 reported that the Minister in charge of Muslim Affairs, a Malay, had said that it was not necessary for certain sections of the Malay community to have a dialogue with the Senior Minister Lee Kuan Yew on a remark made by the latter which, in their view, cast doubt on the loyalty of the Malays to the nation. On 1.10.99, the Straits Times reported that Mr Lee had said he would meet with them provided that they understood that the issue of loyalty and race could not be settled by mere talk.

<sup>20</sup> Singapore left Malaysia because of the intractable differences in the political objectives of the United Malay National Organisation (the dominant political party in the States of Malaya) and of the People's Action Party (the dominant political party in Singapore). The PAP was pursuing the goal of a Malaysian (i.e., multi-racial) whilst UMNO was pursuing a Malay (dominated) Malaysia, with the other races playing a subordinate role in the control and exercise of political power.

nation, in the absence of which they would not be able to live together in peace and harmony. At one time there were some idealists who believed that the best way to achieve nationhood and enable the people to share a common destiny was that Singapore should be a melting pot of all the different peoples who have made it their home, in the same way that the USA was characterised as a melting pot of all Americans.<sup>21</sup> Today, the political leadership in Singapore accepts that racial divides cannot be removed totally, and that we no longer live in a world where the dominant ethnic group may forcibly assimilate or destroy the cultures of the minority, and therefore politically, weaker ethnic communities. In the case of Singapore, geopolitical factors have also made any attempt at assimilation impractical and unwise. Hence, multi-racialism and multiculturalism are not merely desirable social goals to promote but more crucially they are political objectives which must be realised if Singapore is to survive and progress as a nation.<sup>22</sup>

14 The existence of a national identity is particularly crucial for the future of Singapore as an independent state. Singapore is a country with a majority population of Chinese bordering 2 countries each with a majority population of Malays. Apart from being a multi-racial society from its founding, Singapore has no choice but to accept its destiny as a multi-racial nation in Southeast Asia. In geopolitical terms, Singapore cannot prosper if it is viewed with suspicion by its bigger neighbours as an outpost of China (which, of course, it is not and has never been). Multi-racialism in the sense of tolerance of the cultural values of each ethnic community is essential to nation building for Singapore. It is a core value of the Singapore polity and nation.

21 In *The Spirit of Community* (1995 ed Fontana Press), Amitai Etzioni wrote (at pp 154-5):

“If one takes the notion of a rainbow society as a criticism of America as a melting pot, it is a useful metaphor. The view that American culture as a melting pot does not imply that new Americans and their children are to abandon their heritages and subcultures and become homogenised Americans, without distinct traits or culture.

Although two generations ago there was a widespread acceptance of the melting pot idea, Communitarians can now readily recognise that the melting pot is “*unnecessarily homogenizing*. There is no reason to expect or to welcome, let alone to use the moral voice to foster, the idea that all Americans should learn to favour one cuisine....one form of folk dancing, one kind of music, and so on. On the contrary, the variety of heritages, subcultures, and communities can be readily embraced as enriching American society....multiculturalism should expand the understanding of American culture into a rich and more varied tapestry.”

22 The Chinese had settled in Malacca since the 15th century when Admiral Cheng Ho visited Malacca. More Chinese came with the arrival of the Portuguese in Malacca in 1511, the Dutch in 1604 and the British in 1796 in Penang and in 1819 in Singapore. The early Chinese intermarried with the Malays, learnt to speak a form of patois (combining bazaar English and Malay) and modified the Chinese cuisine with local ingredients, resulting in a distinct community called the Babas or the Peranakans. However, they retained much of their Chinese culture although many of them could not speak Chinese.

15 The second question accepts that the criminal law protects certain core interests of society by threat of punishment if the law is broken. Primarily, the function of the criminal law is to protect individuals and property from harm and to preserve public order. In this context, all persons are equal before the law and entitled to the equal protection of the law. The question is whether the law should allow a cultural defence to such infractions of the law for individuals whose cultural values might have led them to break the law, whether deliberately or otherwise. This issue has not been examined or studied systematically in Singapore. This paper is an attempt to do so.

16 As was recounted earlier, although the colonial government made few concessions to the cultures and religious practices of the various races living in Singapore in importing into Singapore an English criminal justice system, there must have been instances of sympathetic colonial judges applying the law in a sympathetic way to accommodate cultural practices, whenever these did not contradict their sense of right and wrong.<sup>23</sup> This judicial approach can also be seen in some of the decisions of the judges of today. As regards legislation, the Government has always been sensitive to the need to accommodate cultural diversity in the application of any new criminal laws: see ¶¶37–38 herein.

## **Maintaining racial harmony and peaceful co-existence in Singapore**

### *Protection of minorities in Singapore*

17 The Constitution of the Republic of Singapore provides for fundamental rights such as equality before the law and the equal protection of the laws, freedom of speech and expression, freedom of association, freedom of religion, etc. (Articles 12–15) These rights are derived from the Malaysian Constitution which was specially structured to preserve multiculturalism as far as its values were consistent with the new democratic order. Neither Malaysia nor Singapore had a need to subscribe to the International Covenant on Civil and Political Rights (ICCPR) or any other human rights convention in order to subject itself to a moral order that guarantees its peoples fundamental freedoms and rights similar to those covenanted in the ICCPR.

18 However, the Singapore Constitution has certain provisions for the protection of minority communities which were the result of a constitutional arrangement made in 1959 between the United Kingdom Government and the then partially elected government. The former recognised that Singapore was and would be dominated by the Chinese and that it was necessary to write into the Constitution the special position

<sup>23</sup> See note 16.

of the minority races, especially the Malays. Accordingly, the Constitution contains express directions that the Government should constantly care for the interests of the racial and religious minorities in Singapore. (Article 152(1)). It expressly recognises the special position of the Malays as the indigenous people of Singapore and, accordingly, it is the responsibility of the Government to protect, safeguard, support, foster and promote their political, educational, religious, economic, social and cultural interests and the Malay language. (Article 152(2)).

19 The Constitution also gives the legislature powers to enact special laws to regulate Muslim religious affairs. The Administration of Muslim Law Act (AMLA) establishes a religious council for the administration of the Muslim faith and affairs and also a Syariah Court to adjudicate disputes relating to betrothal, marriage, divorce, and the division of property according to Muslim law as varied by Malay custom: s 35. The Administration of Muslim Law Act provides for certain ‘Muslim’ offences, but these offences are not triable by the Syariah Court but by the ordinary civil courts. Some of these offences are:

- (i) cohabitation outside marriage, by either party (s 134);
- (ii) enticing an unmarried woman from her *wali* (lawful guardian) without consent (s 135);
- (iii) failure to pay *zakat* or *fitrah* (alms) (s 137);
- (iv) failure to report conversion to or from Islam (s 138); and
- (v) teaching or publicly expounding false doctrine (s 139).

#### *Constitutional safeguards against ‘differentiating’ laws*

20 The Constitution also establishes a Presidential Council for Minority Rights with the specific function of reporting to Parliament on any Bill (other than money bills) passed by Parliament or subsidiary legislation which is a ‘differentiating measure.’<sup>24</sup> If the Council sends an adverse

<sup>24</sup> Article 68 defines a differentiating measure as “any measure which is, or is likely in its practical application to be, disadvantageous to persons of any racial or religious community and not equally disadvantageous to persons of other such communities, either directly by prejudicing persons of that community or indirectly by giving advantage to persons of another community”.

Set out below are selected examples of statutory provisions and subsidiary legislation that accommodate cultural diversity but are not differentiating measures:

- (1) the Administration of Muslim Law Act (Cap. 3) (AMLA);
- (2) the Human Organ Transplant Act (Cap. 131A) s 5(1) and (2)(g) which prohibit the removal of organs from deceased Muslims and s 12(1) and (2) which set out the criteria on whether and how Muslims can receive such organs if they donate their organs under the Medical (Therapy, Education and Research) Act (Cap 175) after death;

report on the Bill to Parliament, Parliament may either (a) amend the Bill and send it back to the Council for consideration; or (b) affirm the Bill without amendment. In the latter case, the Bill may not be presented to the President for assent unless it has been passed by the affirmative vote of not less than two-thirds of the total membership of Parliament.<sup>25</sup>

*Freedom of religion and public order*

21 Freedom of religion is a fundamental right under the Singapore Constitution. Article 15(1) provides that every person has the right to profess and practise his religion and to propagate it. However, this freedom does not authorise any act contrary to any general law relating to public order, public health and morality (Article 15(4)).

22 The Penal Code, first enacted in 1872, recognised the parity of all religions and gave them equal protection by criminalising certain acts that were insulting or likely to cause a breach of the peace. Among the offences made punishable under the Penal Code are:

- (a) injuring or defiling any place of worship or object held sacred by any class of persons, with the intention of thereby insulting or with knowledge that it is likely to insult the religion of any class of persons (s 295);
- (b) disturbing a religious ceremony (s 296);
- (c) trespassing in any place of worship or any funeral or burial place or columbarium, or offers any indignity to any human corpse (s 297); and

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- (3) the Oaths Act (Cap. 211) s5(1) which allows Muslims and Hindus to make affirmations instead of taking an oath;
  - (4) the Passports Regulations (Cap. 220, Rg 1) reg 22(3)(f) which exempts Muslim pilgrims residing in Singapore returning from Saudi Arabia from production of passports on arrival and departure;
  - (5) the Prisons Regulations (Cap. 247, Rg 2) reg 99(2) which provides that Jewish prisoners are not to be compelled to work on Saturdays if they claim exemption and they may also keep such festival days as may be allowed by the government;
  - (6) the Prisons Regulations reg 99(3) which allows Muslim prisoners to observe the fast of Ramadan and to work less during the fast;
  - (7) the Singapore Armed Forces (Leave) Regulations (Cap. 295, Rg 12) reg 9(d) which empowers the Director of Manpower to grant pilgrimage leave to Muslim servicemen;
  - (8) the Women's Charter (Cap. 353) s 3(2) & (4) which excludes Muslims from the provisions relating to marriage and divorce to Muslims; and
  - (9) the Corrosive & Explosive Substances and Offensive Weapons Act (Cap. 65) s 6(3)(b) which presumes that a weapon is carried with lawful authority if it is part of his official or ceremonial dress on any official or ceremonial occasion, e.g., the wearing of *kris*es by Malay cultural groups or *kirpans* by Sikhs on certain festive occasions.

<sup>25</sup> Article 78. Subsidiary legislation constituting a differentiating measure is subject to a similar corrective procedure. The Minister may amend it and send it back to the Council for consideration, or Parliament may affirm it by a simple majority vote.

- (d) uttering words, etc., with deliberate intent to wound the religious feelings of any person (s 298).<sup>26</sup>

Blasphemy *as such* is not an offence in Singapore, but Salman Rushdie could have been prosecuted under s 298 of the Penal Code for his role in publishing *The Satanic Verses*.<sup>27</sup>

### *Jehovah's Witnesses*

23 In Singapore, Jehovah's Witnesses are an unlawful society.<sup>28</sup> All its publications have also been proscribed as undesirable under the Undesirable Publications Act. All constitutional challenges by Jehovah Witnesses have failed as the courts have held that their tenets prevent them from recognising civil authority or serving in the armed forces and accordingly, were detrimental to public order. The courts have taken a hard-line approach to Jehovah's Witnesses basically because in the long term their tenets would undermine national security, either by encouraging other citizens against national service or providing a religious shelter (or sanctuary) for those who do not wish to do national service (see ¶34 herein). Opting out of national service in these ways or by these means is not acceptable to the national ethos that every citizen has to demonstrate loyalty by undergoing training to defend the nation when the need arises. Singapore has to rely on every available resource to defend its sovereignty and territorial integrity.

### *Maintaining religious harmony*

24 In Singapore, religious harmony is virtually indistinguishable from racial harmony as religion and race generally go together, except for Christianity which has a broader racial base. All Malays, except for a small number, are Muslims (indeed, Malays are defined partly by their religion and partly their historical geographical home, *viz.*, *tanah melayu*), the majority of the Chinese are Buddhists or Taoists and the majority of

<sup>26</sup> The scope of this offence is wider than that of the common law offence of blasphemy.

<sup>27</sup> The book has been banned under the Undesirable Publications Act (Cap. 338) on the ground that it deals with matters of religion in such a manner that the availability of the book is likely to cause feelings of enmity, hatred, ill-will or hostility between different racial or religious groups.

Cinema, video recordings and other films are subject to censorship. Stanley Kubrick's film *Eyes Wide Shut* was approved for showing in Singapore after two scenes were blacked or taken out: (1) an oral-sex scene between 2 women; and (2) the chanting of a sacred Indian scripture over an orgy scene. See Straits Times report dated 17.9.99.

<sup>28</sup> The Watch Tower, the parent body, was registered as a society under the Societies Act until 14 January 1972 when it was dissolved by an order of the Minister on the ground that the society was being used for purposes prejudicial to public peace, welfare or good order in Singapore. Thereafter it could not meet or propagate its tenets as a society (defined as an association of 10 or more persons).

Indians are Hindus and Sikhs. Racial harmony is vital to social and political stability and order and hence, nation building and national unity. Religious and racial riots in Singapore will undermine racial harmony and national unity. Such riots have occurred during the formative period of Singapore's road to nationhood.

25 In 1990, the Singapore Parliament enacted the Maintenance of Religious Harmony Act (MRHA) (Cap. 167A) to put in place a limited mechanism to enable prompt and effective action to be taken to defuse potentially explosive situations which could lead to religious enmity and hatred, and worse, riots. The rationale for the law is set out in a White Paper presented to Parliament on 26 December 1989. The White Paper sets out numerous examples of individuals engaged in acts or utterances that are insensitive, hostile or provocative.

*Preventing racial riots caused by religious intolerance*

26 Singapore has a raft of criminal laws that are able to deal with acts of religious intolerance or racist violence that might result in personal harm or public disorder and even subversion of the State.<sup>29</sup> However, the Government felt that these laws were not appropriate to head off less serious acts quickly. Singapore is too vulnerable a society for racial riots to occur even if they can be contained later. Any outbreak of racial or religious disturbance can quickly result in political and social instability, affect internal security and set back the building of a national identity.

27 The weapon that was adopted to prevent such potential trouble was a statutory restraining order. The MRHA authorises the Minister to issue a restraining order against any member of a religious group or institution from doing certain specified acts that threaten public order and national security.<sup>30</sup> Before making the order, the Minister has to give the affected

<sup>29</sup> The law against subversion is the Internal Security Act, originally a Malaysian law. The Malaysian government uses this law to detain religious 'deviants' whose teachings could cause conflict and disunity among the Muslims. The Malaysian Government detained the leader of the *Al Aquam* sect under this Act, leading to its demise a few months later. Religious disharmony is also a serious political problem in Malaysia: see report **Mahathir warns against lies by ulamas** in *The Straits Times*, 7.9.99

<sup>30</sup> S 8(1) authorises the Minister to make a restraining order against any religious figure who has committed or attempts to commit the following acts: (a) causing feelings of enmity, hatred, ill-will or hostility between different religious groups; (b) carrying out activities to promote a political cause or a cause of any political party while, or under the guise of propagating or practising any religious belief; (c) carrying out subversive activities under the guise of propagating or practising any religious belief; (d) exciting disaffection against the President or the Government of Singapore while, or under the guise of propagating or practising any religious belief. S 8(2) provides that the restraining order may restrain him from making any oral or written statements on any subject or theme as may be specified in the order or to hold office as editor or committee member of any publication without the Minister's consent.

person an opportunity to make representations against the proposed order. Similar provisions in the MRHA apply to persons who incite, instigate or encourage any religious group or institution to commit any of the proscribed acts. A breach of a restraining order is an offence punishable with fine or imprisonment or both.<sup>31</sup>

28 A restraining order is subject to review by the Council for the Maintenance of Religious Harmony, whose members are appointed with the consent of the President. The power of consent is exercisable at the President's discretion as a check against undesirable or unmeritorious appointments. The function of the Council is to make recommendations to the President that the order be confirmed, cancelled or varied in any manner.<sup>32</sup>

### *Racist conduct and violence*

29 Except for the MRHA, the Government has not found it necessary to enact special criminal laws to deal specifically with racial or racist violence in order to raise the public consciousness against racial or religious intolerance or its danger to public order and security. The Penal Code has sufficient provisions to deal with violence of any nature. The Singapore public has been reminded regularly of the danger of racial riots and violence happening again. Many Singaporeans have not forgotten the religious riots in 1950 when Muslim fanatics took to the streets to show their anger at insensitive newspaper coverage of a custody case concerning a converted Muslim girl, Maria Hertogh.<sup>33</sup> Many Singaporeans who have lived through the racial riots in July and September 1964 are still alive.<sup>34</sup> They led to the traumatic ejection of Singapore from Malaysia

31 S16. The offence is punishable with up to \$10,000 fine or 2 years' imprisonment or both. Up to date, the MRHA has not been invoked against any religious teacher.

32 Ss10-12. Under Article 22I of the Constitution the President has the discretionary power to reject the advice of the Cabinet where such advice is contrary to the advice of the Council. This power enables the President to check any abuse of executive power.

33 The Straits Times had published photographs of Maria Hertogh in a convent, one of which showed her kneeling at the altar in a Catholic church. This was the first serious riots in Singapore caused by religious fanaticism. Many innocent people died as a result of the violence. British troops had to be called out to restore order. Maria Hertogh was a Dutch girl who was left by her mother in the care of (or given for adoption to) a Malay woman during World War II when Malaya was occupied by the Japanese. After the war ended, the mother came back and claimed her. The action was heard by English judges (at first instance and on appeal). The courts held that Dutch law instead of Muslim law was the proper law and ordered Maria (who by then had married a Muslim) be returned to her natural mother.

34 These were riots between the Malays and the Chinese at a time of political differences between the ruling party in Singapore and that in Malaysia. The political leaderships of both countries have different views on the exact causes of these riots. Racial disturbances also occurred in May 1969 when full-scale racial riots erupted in Malaysia in May 1969.

in August 1965. No special law was necessary to remind the people that racial riots were even more dangerous to the fabric of Singapore than any other kind of violence.

30 The Penal Code (Cap. 224) contains a large number of offences relating to harm to the person and to property, similar to common law offences of the same character, such as:

- (a) murder (s 302);
- (b) culpable homicide not amounting to murder (s 304);
- (c) different kinds and degrees of hurt (ss 319–338);<sup>35</sup>
- (d) wrongful restraint and confinement (ss 339–348);
- (e) criminal force and assault (ss 349–358);
- (f) kidnapping, abduction, slavery and forced labour (ss 359–374);  
and
- (g) rape and unnatural offences (ss 375–377A).

31 The Penal Code also contains public order offences, or offences against the public tranquillity, including:

- (a) unlawful assembly and affray (ss 141–160);
- (b) making, printing, possessing, posting or distributing any document containing any incitement to violence (s 151A);
- (c) wantonly giving provocation, with intent to cause riot (s 152);
- (d) criminal intimidation (s 503);
- (e) intentional insult to provoke a breach of the peace (s 504);
- (f) making, publishing or circulating any statement, rumour or report conducive to public mischief, such as with intent to incite any class or community of persons to commit any offence against any other class or community of persons (s 505);<sup>36</sup> and
- (g) causing any person to do any act by inducing him to believe that he will be rendered an object of divine displeasure (s 508).

<sup>35</sup> Act 18 of 1998, amended the Penal Code, ss 323–325, 343–344 and 509 to provide enhanced punishments (at 1.5 times) for ‘harm to body’ offences committed by employers against their domestic maids or members of the employers’ households. Almost all domestic maids in Singapore come from the Philippines, Indonesia and Sri Lanka.

<sup>36</sup> There is an exception to s 505, *viz.*, “It does not amount to an offence ... when the person making, publishing or circulating any statement, rumour or report has reasonable grounds for believing that such statement, rumour or report is true and makes, publishes or circulates it without any such intent as aforesaid.”.

32 Additionally, the Miscellaneous Offences (Public Order and Nuisance) (Amendment) Act 1996 provides for a number of public order and public nuisance offences, including offences such as,

- (a) causing intentional harassment, alarm and distress (ss 13A and 13B); and
- (b) causing fear or provocation of violence by distributing or displaying to another person any writing, sign or other visible representation which is threatening, abusive or insulting (s 13C).

### **The concept of cultural defence**

33 The principles underlying the offences prescribed by the Penal Code are accepted by the people as reflecting universal values of morality, of right and wrong. The various religions of the various races living in Singapore share common moral values on what is right and wrong conduct. The Penal Code provides for offences affecting the human body and property as well as the defences to such offences. All the defences correspond to defences to common law offences. None of them provides a cultural defence. Indeed, the Penal Code has criminalised certain conduct among the local inhabitants which, prior to its enactment, was not criminal at all, e.g., having two or more wives at the same time.

34 Criminal laws relating to the maintenance of public order or national security enacted after 1872 have not provided for cultural defences of any kind. The best illustration is the law relating to national service to enable Singapore to maintain a citizens' army. The Enlistment Act 1970 (Act 25 of 1970) requires compulsory national (military) service for all male citizens and certain categories of permanent residents not below the age of 18. All able-bodied youths are required to serve national service. It is an offence for a person not to enlist when required to do so. There is no exemption for conscientious objectors or religious objectors such as Jehovah's Witnesses.

35 However, in the administration of such laws it is possible for the State to accommodate, and it has accommodated, cultural diversity where doing so does not detract from the object of such laws or infringe the constitutional right to equal protection of the law. For example, the Singapore Armed Forces operate separate kitchens to feed Muslim soldiers. They are given pilgrimage leave. Turbaned Sikhs<sup>37</sup> are exempted from wearing helmets when riding motor cycles, and Muslim prisoners are allowed to observe the fast of Ramadan and given light work during Ramadan.

<sup>37</sup> The enforcement authority received an inquiry as to whether Sikh women would also be exempt. The answer given was Yes provided they also put on turbans.

36 In general, the policy of the Government is not to grant special rights to any community, whether the majority or a minority group except as provided in the Constitution. Every citizen in Singapore has the same opportunities for personal advancement in terms of education and employment or profession. The system of administration is based entirely on meritocracy, the practice of which is constitutionally protected in a number of ways:

- (a) Article 12(2) provides that except as authorised by the Constitution there shall be no discrimination against citizens on the ground only of religion, race, descent or place of birth in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition of property or the establishing or carrying on of any trade, business, profession, vocation or employment;
- (b) Article 78 authorises the Presidential Council for Minority Rights to make an adverse report on any Bill which disadvantages any minority group; and
- (c) Article 154 provides that subject to the provisions of the Constitution, all persons of whatever race in the same grade of service of the Government shall, subject to the terms and conditions of their employment, be treated impartially.

### Other legislative concessions to cultural diversity

#### *Fortune telling*

37 Prior to 1996, it was an offence for any person pretending or professing to tell fortunes, or using any subtle craft, means or device by palmistry or otherwise, to deceive and impose upon any person.<sup>38</sup> Fortune telling was and is very popular among the Chinese and the Indians. *Feng Shui*<sup>39</sup> could qualify as a form of subtle craft or fortune telling that could be used to deceive people. Chinese astrologers dispense advice on the

<sup>38</sup> Miscellaneous Offences (Public Order Nuisance) Act (Cap. 184), s 27(1)(b). This section replicates s 4 of the Vagrancy Act 1824 (UK).

<sup>39</sup> Literally “*wind and water*”, described as a fusion of art and science with roots allegedly going back at least to the Han Dynasty (206 BC to 222 AD). *Feng Shui* is regarded as a ‘science’ by its practitioners and is applied to adapt “the residence of the living and the dead so as to co-operate to harmonise with the currents of the cosmic breath”. In the first book written in English on the subject in 1873, Ernest J Eitel wrote in his book *Feng Shui* “it means “wind and water” and is so called “because it’s a thing like the wind, which you cannot comprehend, and like water, which you cannot grasp.”” He ended his book thus: “The system of Feng Shui...based as it is on human speculation and superstition and not on a careful study of nature, is marked for decay and dissolution.”. He could not have been more wrong as *feng shui* has spread to all countries where there are sizable numbers of Chinese, including England.

most auspicious days and times to move into a new house. Indian astrologers read the horoscopes of Indian clients seeking suitable marriage partners and also fix the most auspicious days for weddings and other events. The Malays use pawangs and shamans for many purposes, such as to make rain come or go away, as is desired. Such cultural practices were not suppressed or discouraged by the authorities so long as there was no complaint of fraud or cheating on the part of the practitioners.<sup>40</sup>

38 The legal problem surfaced as a result of the proliferation of businesses being set up to provide *feng shui* and geomancy services to the public and of advertisements in the Yellow Pages and the media for the provision of such services. The Government had either to enforce the law or change it. It decided to change it to allow such services to be marketed provided that it was not used to deceive or cheat the consumer and the activity was not a public nuisance. The new provision (s 27(1)(b)) brought in by Act 12 of 1996 (Miscellaneous Offences (Public Order and Nuisance (Amendment) Act) contains this qualification.

#### *Nudity and neighbours*

39 Cap. 184 also contains other minor offences which can be said to promote cultural diversity, or at least to ensure that racial feelings are not aroused by the Government tolerating acts by one community which are insensitive to the racial or religious feelings of the other communities. For example, appearing nude in the public view was also made an offence in 1997 by Act 12 of 1996.<sup>41</sup> The Minister, when moving the Bill, explained in Parliament that although a person had a right to privacy in his home, it should not be exercised at the expense of public decency and morality, especially in high-rise housing estates where persons from all communities live next to each other.<sup>42</sup>

#### *Dogs on leashes*

40 Cap. 184 contains a number of offences relating to dogs chasing after or biting people. An owner can be fined up to \$5,000 if his dog is proved to be in the habit of chasing after people (s 8). If a ferocious dog is not muzzled and is allowed negligently to be at large, the owner commits an offence and is liable to a fine of \$5,000 (s 9). If a dog bites a person, the

<sup>40</sup> However, there have been prosecutions in cases of egregious cheating. In *Stonehouse v Masson* [1921] 2 KB 818, Lawrence CJ held that the offence under s4 of the Vagrancy Act of professing to tell fortunes is complete without any allegation or proof that the defendant did not believe in the possession of the powers claimed. Merely to tell fortunes is an offence in itself, whatever the state of mind of the defendant. Cf. *Farmer v Mills* [1948] JC 4 where the Scottish Court held otherwise.

<sup>41</sup> S 27A(1). Subs (2) provides that for the purpose of subs (1), the reference to a person appearing nude includes a person who is clad in such a manner as to offend against public decency or order. This is not an easy law to enforce.

<sup>42</sup> The law was introduced after the public had expressed strong sentiments in the media about a case where a couple was seen nude in their Yishun Town flat.

punishment for the owner is the same, except that compensation of up to \$2,000 may be ordered. It is not necessary for the prosecution to show a previous vicious propensity in the dog or knowledge of such propensity.

41 In Western countries, these are normal offences to prevent dogs from frightening or injuring people. But, in Singapore, it has the added significance that dogs are perceived to be ‘unclean’ by Muslims, and a dog’s bite causes greater injury to a Muslim than the physical pain normally associated with such bites.

#### *Practice of non-Western medicine*

42 In Singapore, no unauthorised person may practise medicine or hold himself out as a medical practitioner. The punishment is a fine not exceeding \$100,000 or imprisonment up to two years for a first offence, and more serious punishment for a second or subsequent offence: the Medical Registration Act (Cap. 174), s 17. However, s 17(2) provides that it shall be a defence to a prosecution under subs (1) if the defendant proves that he practised a system of therapeutics according to Malay, Chinese or Indian method. The practice of acupuncture in Singapore falls within this exemption.

#### *Human organ transplant*

43 Singapore’s human organ transplant law applies only to kidneys. It provides a scheme based on the opting out principle. S 5 of the Human Organ Transplant Act (Cap.131A) (HORTA) empowers a doctor to authorise, in writing, the removal of a healthy organ from the body of a person who has died in hospital for the purpose of transplanting it to the body of a living person unless the deceased has opted out of the operation of the Act during his lifetime.

44 However, in deference to Muslim sensitivities, this law has not been applied to Muslims. As a result, Muslims are not accorded priority as recipients of kidneys for transplant (s 12) unless they have gifted their organs, to take effect upon death, under s 3 of the Medical (Therapy, Education and Research) Act (Cap. 175) (which applies to any part or organ of the body). The Muslim Religious Council has ruled that it is not contrary to Islam for Muslims to donate their kidneys for transplant but the cultural aversion of Muslims to donating their kidneys, even after death, is sufficiently strong to disable the Government from amending the law.<sup>43</sup>

#### *Criminal procedure and evidence*

45 The courts allow accused persons, especially in capital cases, to call evidence on cultural factors. In most of these cases, the problem is not

<sup>43</sup> Malaysia faces the same problem: New Straits Times report dated 20.9.99.

that the accused does not know that what he did was an offence (e.g., killing, hurting or robbing people or stealing property) but that he cannot understand the proceedings which are conducted in English. In such cases, interpreters have to be found to interpret the proceedings to them. In the case of local residents, this is not a problem. But it can be in the case of foreign workers and drug traffickers.<sup>44</sup>

*Judicial and prosecutorial acceptance of cultural factors in determining fault or prosecution*

46 Courts in Singapore do take cultural factors into account in determining the criminal liability of the accused. Cultural factors are usually pleaded to reduce the gravity of the offence, such as from murder to culpable homicide not amounting to murder on account of uncontrollable provocation<sup>45</sup> or diminished responsibility.<sup>46</sup> However, it

44 Examples of such cases are (1) a Thai worker, charged for murder, claimed that he spoke a form of Thai from central Thailand and that the proceedings at the trial had been interpreted to him in Bangkok Thai; (2) a worker from Kelantan, charged for murder, claimed that only a Kelantanese could interpret for him; (3) a Nigerian, charged for drug trafficking, insisted on the proceedings being interpreted to him in his tribal language.

45 See *Govindasamy v PP* [1975–1977] SLR 165 where the plea of provocation failed. The deceased was a Muslim. His fiancée was the daughter of the accused, a Hindu. The accused had lured victim to his house and inflicted 7 fatal wounds on his head. He testified: “We exchanged hot insulting words and I must have mentioned something about his religion and words to the effect that what right had he a Muslim to interfere with a Hindu girl’s life....We exchanged insulting words about each other and about our religion and finally in the heat he said that my Hindu daughter, because of my neglect, could have slept with many men and even he can sleep with her. I cannot remember the precise words of all that was said but I was hot with anger and I lost my head.” The trial judges disbelieved the testimony and also held that the retaliation was not commensurate with the degree of provocation given by the deceased.

In *PP v Loganathan*, Criminal Case No 29/85, the defence of provocation succeeded. The trial judges found: “We believe you when you say that Sangivi’s description of your mother as a ‘prostitute’ and the other words he uttered had a terrible impact on you. Having regard to your social background, your family circumstances....we have come to the conclusion on a balance of probability that Sangivi’s words constituted provocation that was grave and sudden enough to make you lose your self-control...” In *PP v Kannan*, Criminal Case No 7/98, the defence also succeeded. The accused was an Indian aged 35. The victim was his wife, aged 35. They had a quarrel during which she told him that his mother was a prostitute and that his sisters were not properly married, and that he came from a pariah family.

See also *Singel v R* (1990) 97 ALR 1(Aust) where the High Court said: “...there are classes or groups within the community whose average powers of self-control may be higher or lower than the community average. Indeed, it may be the average power of self-control of members of the one sex is higher or lower than the average power of control of members of the other sex. The principle of equality before the law requires, however, that differences between different classes or groups be reflected only in the limits within which a particular level of self-control can be characterised as ordinary. The lowest level of self-control which falls within those limits or range is required of all members of the community.” [In that case, the court took into account age as a factor in applying the objective test].

46 In *PP v Somwang Phatthanasaeang* [1992] 1 SLR 138, the deceased victim and the accused were Thai workers. The defence was diminished responsibility based on the

is rare for the courts to give effect to cultural factors in determining culpability in the large majority of offences. For example, fights caused by staring incidents are common among Chinese youth gangs and secret societies. Staring is interpreted as a challenge to a rumble and is therefore extremely provocative, as failure to accept it results in a loss of face. Staring, as a cultural trait, is not accepted by the courts as a form of cultural provocation but simply as uncultured conduct.

47 In *Ng Yang Sek v PP* [1997] 3 SLR 661, the appellant had been convicted for trafficking in 3,499 g of raw opium, a capital offence. His defence was that he practised Chinese medicine and treated people for rheumatism, sprains, dislocations and other conditions to the bone. He had acquired his knowledge in China and had also worked in a Chinese medicine hall in Singapore for 3 years. He would prepare the medicine for the plasters by first burying the opium under a Toh Pit' tree for 20 days, mix it with sweet potatoes and bananas for 10 days and finally blend the mixture with 5 Chinese herbs. The Court of Appeal held that he had not trafficked in opium but was only guilty of unauthorised possession of an uncontrolled Class A drug.

48 The public prosecutors in Singapore take into account as part of the public interest the desirability of prosecuting offenders for minor offences committed by reason of cultural factors, such as the making of excessive noise as part of or during religious ceremonies and practices, e.g., funeral wakes of the Chinese, loud caroling, loud muezzin calls to the faithful, etc.

#### *Judicial acceptance of cultural factors in determining punishment*

49 Singapore courts apply English principles of sentencing, with modifications to suit local circumstances. In England, the courts have held that the presence of a racial element in the commission of an offence is a 'gravely aggravating feature',<sup>47</sup> attracting a higher punishment. It is

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following factors: (1) financial hardship necessitating him to leave his home, wife and son in Thailand; (2) disillusionment and disappointment in Singapore due to irregularity of work with frequent laid off days, constant accommodation changes, language and communication problems, and high cost of food; (3) inability to pay back debts; (4) frequent and persistent low mood feelings throughout his stay in Singapore associated with insomnia, poor appetite and loss of weight, sense of loneliness, guilt and suicidal thoughts; aggravation and extreme provocation caused by victim through the use of insulting words and assault with a broom." The Court of Appeal held that these factors were relevant, if true, but that other objective evidence suggested that many of them were not true.

<sup>47</sup> Per Lord Taylor LCJ in *A-G's References Nos 29-31 of 1994* (1995) 16 Cr.App.R.(S.) 698, 702. Followed in *J.E.Craney v P.C.Corbet* [1996] 2 Cr.App.R.(S.), CA, where words such as 'nigger' and 'coon' were used.

In 1998, the UK Parliament enacted the Crime and Disorder Act 1998 to provide for higher punishments for racially motivated crimes (RMC). RMC, targeted against Afro-Caribbean immigrants and Asians (mainly South Asians), had been on the increase

certain that Singapore courts will treat offences committed on racial or religious grounds as aggravated offences for the purpose of sentencing the offenders. On the other hand, where the offences are not 'racist' offences, the courts may sometimes treat cultural factors as mitigating factors in sentencing whenever such factors show the lack of deliberation or intention in committing the offences.

### *No cultural defence in Singapore*

50 We have stated earlier that the Penal Code and criminal statutes relating to the maintenance of public order or national security do not countenance any kind of cultural defence.<sup>48</sup> We do so at the risk of damaging the cohesiveness of our social fabric. The law may give special privileges and protection for ethnic or religious minorities or the poor or disadvantaged, but no social group should be immunised from laws that protect the community as a whole from harm by others. Such laws deny the democratic values of equality before the law and the equal protection of the law. They may encourage the perpetuation of undesirable or unreasonable social practices peculiar to only one section of the community. Discrimination against the majority culture can only lead to

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since 1990. Commonly used expressions with reference to the minorities were "Paki bashing", "Chink bastards" and "black bastards", "nigger", "wog" and "coon man". During the Parliamentary debate, Baroness Lady Flaherty said that it was essential that public policy reflected the displeasure felt by society against those who commit racist acts. The Solicitor-General, Lord Falconer of Thoroton said the new offence of a racially aggravated crime "underlines the importance that [the UK] Government attach to stamping out racially aggravated crime." Such new offences send a message to society that the Government takes a serious view of such anti-social conduct. These offences were "new" only in the sense that they prescribe additional punishment if there was racial hostility which motivated the offences. In all other respects, the offences were those already in existence (*viz.*, offences of common assault, unlawfully causing actual bodily harm and grievous bodily harm) under the Offences Against the Person Act 1861, the Public Order Act 1986 and the Protection from Harassment Act 1997. The desirability of the new law has been questioned: see Fernne Brennan: "*Racially Motivated Crime: the Response of the Criminal Justice System*" [1993] Cr LJ 17. The following points were made: (1) questionable effect of higher punishment as a deterrent; (2) inconsistency with other policy objectives such as rehabilitation; (3) overcrowding in prisons if more people are jailed; (4) key policy objective of protecting ethnic minorities not likely to be achieved if the police fail to record all RMC as such (as published statistics appear to suggest); (5) criminalising racist behaviour may lead to 'identity politics', i.e., when individuals relate to one another as members of competing groups based on characteristics such as race, gender, religion and sexual orientation, and the disadvantaged and victimised find it strategically advantageous to be recognised as such and to demand a greater claim on society's resources; (6) victims may demand more and harsher measures; (7) courts may be exposed to claims of reverse discrimination in meting out sentences if victims are white rather than coloured, especially if the victims are policemen; (8) will courts apply law equally?

48 ¶¶ 33-34.

social and political tensions in the community. A full fledged cultural defence is not consistent with and may even undermine the rule of law.<sup>49</sup>

### Summary of multiculturalism and the law in Singapore

#### *Racial harmony and peaceful co-existence*

51 The Constitution makers recognise the richness of the cultural diversity of its racial groups and have imposed an obligation on the Government of the day to constantly care for the interests of the racial and religious minorities in Singapore. The Government has put in place a structure of preventive and penal laws which, although having the effect of restricting freedom of speech and expression, freedom of religion and freedom of association, ensure racial harmony in Singapore. Without peaceful co-existence among the various racial groups, Singapore's viability as an independent and sovereign state may not be assured.

#### *Allowing exemptions from the criminal law on cultural grounds*

52 Multi-racialism and multiculturalism are desirable goals in plural societies. But plural societies must have core values to bond the various ethnic groups together so that they have a common identity of national interests. The criminal law lays down minimum standards of behaviour demanded of all members of the society for the protection of its members, their property and rights, absent which the society cannot survive. The criminal law has a central core of values, religious, moral or humanitarian that are universally accepted. These core values must prevail over the fissiparous tendencies of individual cultures. Multiculturalism is a worthy goal if it strengthens this core of societal values by adding its richness to the way of life of the people as a whole. This, more than any other factors, makes it necessary for the State to deny a cultural defence to a breach of the criminal law.<sup>50</sup>

49 Other Commonwealth countries may have adopted different approaches and standards in supporting multiculturalism. Australia has articulated a national agenda for a multicultural Australia, with the policy of protecting the rights of members of society to enjoy their culture and language and practise their religion. See the Australian Law Reform Commission's Discussion Paper (No 48) on *Multiculturalism: Criminal Law* (May 1991) and its subsequent report, Report No 57 on *Multiculturalism and the Law* (March 1992).

The cultural defence has also been raised in courts in USA. The arguments for and against the acceptance of a cultural defence are discussed in *The Cultural Defense in the Criminal Law* (1986) 99 Harvard Law Review 1293.

50 For example, the Prevention of Corruption Act (Cap. 241), s 23 provides that in any civil or criminal proceedings under the Act evidence shall not be admissible to show that any such gratification as is mentioned in the Act is customary in any profession, trade, vocation or calling. This provision prevents accused persons from relying on the Chinese custom of giving *hongbaos* on Chinese New Year day. It was common for postmen, garbage collectors and other public service providers to demand such

*Cultural factors and determination of culpability*

53 Cultural factors may be taken into account in determining culpability in limited circumstances, e.g., whether the accused had lost his self-control in killing the victim or was suffering from diminished responsibility. In general, the courts normally apply an ‘objective’ standard<sup>51</sup> and treat all accused persons as equal before the law, whatever their race, religion, language, education or cultural make-up. The need to maintain law and order in Singapore is paramount and prevails over cultural norms.

**CONCLUSION***The way forward for Singapore*

54 Singapore will have to continue to promote multi-racialism and multiculturalism for the following reasons:

- (a) multi-racialism is vital to the survival of Singapore as a nation. Multiculturalism enriches the social life of Singapore society through the interaction of the way of life of each community. They are complementary ‘goods’ that feed off each other;
- (b) all persons have the right to live according to their way of life and are equal before the law and entitled to the equal protection of the law;
- (c) specific criminal laws to protect multiculturalism demonstrate the importance the State places on multiculturalism as a way of life and serves to implant in the public consciousness the value of cultural and racial tolerance. Criminal laws can change or modify human actions or conduct for the better;<sup>52</sup>
- (d) the State is justified in not accommodating any cultural norms or practices that cause harm to the State or the community at large or any other ethnic group. The guiding principle is that

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gratuities. Interestingly, the Muslim community has adopted this custom on Hari Raya Haji when they would give out cash packets wrapped in green paper.

The custom of the Chinese to light up fire-crackers to welcome the lunar new year has been banned for many years after it had caused loss of life and property. The manufacture of firecrackers in Singapore was also prohibited.

51 In *PP v Teo Eng Chan* [1987] SLR 475, the High Court held that for the offence of rape, the accused’s belief that the woman had consented to intercourse was no defence as the Penal Code required a “reasonable cause to believe that the woman consented”. The Court declined to apply the House of Lord’s decision in *Morgan* [1976] AC 182. This means that cultural factors leading to a subjective belief of consent will not afford a defence.

52 Spitting in public in Singapore was a common habit, mainly among the Chinese and betel nut chewers. This unhygienic and unsightly practice has largely been eradicated when it was made punishable with a fine not exceeding \$1,000 under s 11(1) of Cap 184.

the law should support individual religious and cultural freedoms where their significance to the individual outweighs the harm the law seeks to prevent and where the recognition of them by the law poses no direct threat to the person or property of others;<sup>53</sup>

- (e) for Singapore, preventive law is more effective in realising the goal of racial tolerance and peaceful co-existence among its various communities. Preventive laws also prevent small fires developing into conflagrations that destroy the social fabric and jeopardise national security;
- (f) special racist laws are not necessary for the purpose of punishing racist offenders if they can be adequately dealt with under the general law and if judges are sensitised to the need to impose heavier punishments for such offences. The general law, in masking the public profile of racist crimes, strengthens the principle that the law treats every person as equal, whatever his race or religion may be. Should any punishment inflicted by a judge from a different ethnic group be thought excessive or inadequate, there is a lower risk of any allegation of racial bias, discrimination or victimisation, as the case may be; and
- (g) multi-racialism and multiculturalism will make it easier for the different communities to live in peaceful co-existence and to develop a set of 'core' national values that are essential to nation building. Without a set of core values that binds together all the ethnic groups in the community, a multi-racial society will not be or become a nation.<sup>54</sup>

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<sup>53</sup> Paragraph 1 of Discussion Paper No 48 issued by the Australian Law Revision Commission.

<sup>54</sup> In his address when opening the 7th Parliament in January 1989, President Wee Kim Wee said:

“If we are not to lose our bearings, we should preserve the cultural heritage of each of our communities, uphold certain common values which capture the essence of being a Singaporean. These core values include placing society before self, upholding the family as the basic block of society, resolving major issues through consensus instead of contention, and stressing racial and religious tolerance and harmony. Such a formal statement will bond us together as Singaporeans, with own distinct identity and destiny. We need to inculcate this National Ideology in all Singaporeans, especially the young.”

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