

**THE
EMERGENCY LAWS
IN
MALAYSIA**

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Preface

In so far as the Emergency Laws are promulgated or enacted under the Federal Constitution (see especially Article 150 and generally Part XI) they are part of the one legal system constitutionally operating in Malaysia. Consequently the distinction sought to be made here is that contrasting the Emergency laws discussed in this volume with say the Criminal Procedure Code, the Evidence Act, 1950 and the Penal Code, along the vector of the freedom of the subject safeguarded by these older enactments.

The basic procedure used is to set out the current text of the provision followed by a *Statutory Note* where any amendments previously made are noted. This is followed where felt necessary by a note headed *Application of s.* which consists of a commentary on the provision. This commentary includes relevant cross-references to other provisions, and the citation of decided cases which clarify the law.

Prefatory Note

Text of the speech by the Honourable Minister of Law, Y.B. Datuk Seri Haji Hamzah bin Datuk Abu Samah in introducing the Emergency (Essential Powers) Bill, 1979 in the Dewan Rakyat, Malaysia, on January 17, 1979:

The close of World War II saw the stirrings of nationalism in Asia which gathered momentum as the years rolled by. But the end of that War also brought in its wake a blight that threatens all freedom-loving people and is anathemic to democracy, the blight of militant communism which took the form of terrorism in this country. An emergency was declared in the teeth of this threat. One may well recall here the wanton loss of life and property which resulted from the numerous attacks of these terrorists, not only on the security forces but on the civilian population as well. The maiming and killing and the wanton destruction of property visited upon the nation are all still within living memory. The security forces gave a sterling performance in the discharge of their duties and the conflict with the communist terrorists was prevented from escalating further.

August 31, 1957 witnessed, in the words of the poet Lord Tennyson, the change of the old order (with the departure of the British) which gave way to the new. Peninsular Malaysia or Malaya as it was then known, became independent. To quote Abraham Lincoln, a democratic government, a government of the people, by the people, took the helm of the nation. If indeed the avowed aim of the communist terrorists, as claimed, had been to dislodge the British colonialists then the *raison d'être* for their armed insurgency with independence was swept from under their very feet. This then was time for them to return to society's fold sincerely, without acrimony and without recrimination. But did they do this? Instead they continued with and even increased their militant and subversive activities and proceeded to describe the elected government as a tool of imperialism.

Even after we achieved independence the state of emergency declared in 1948 continued without let. When our very existence as a freedom-loving nation whose only desire is to be left alone to pursue our chosen way of life in peace and harmony is at stake are we indeed living in a state of peace or in a state of emergency? How could one claim that the state of emergency has come to an end when the threat of the subversive and anti-national elements to our peace and security continues to hang like the sword of Damocles over the nation and the means to a restraint that sword from plunging into the nation's heart is the state of emergency itself?

The *modus operandi* of these communist terrorists takes two forms – one is through direct militancy and the other through subversion by underground activities. Thus, the lull in the clashes in the jungles does not signal the end of their threats. The subversive and anti-national activities carried out in the rural and urban areas were intensified to bring about disaffection against the constitutionally elected Government. The underground subversive activities of the terrorists have been a necessary adjunct of the militant activities in the attempt to expand and consolidate their bases in the country. In the early 1960s, the underground subversive terrorism raised its ugly head and the Government was hard put to keep the situation under control.

1964 was yet another threat to our existence as a nation and as a people – that was the beginning of confrontation by the Sukarno regime against the formation of Malaysia. The state of emergency which had always been with us was further aggravated by the confrontation. The communist terrorists and the subversive and anti-national elements in Malaysia were ready to exploit the situation. It was due to the firm and positive action of the government that Malaysia was fortunate not to suffer a worse condition that it had then experienced.

May 1969 was a watershed in the life of our nation. It marked the beginning of a period that brought Malaysia and her people into direct confrontation with grave internal problems that increased the existing threat to public order and security and became posed to demolish the basic foundations of the independence and sovereignty of our country and the very fabric of our society. Racial clashes on the 13th May, 1969 on an unprecedented scale posed a gravely heightened threat to the security and life of our country and to the unity of her people – without doubt prerequisites to the country's political stability. The possibility of subversive and anti-national elements using the occasion for their own ends became a probability bordering on stark reality. None of us who was around then would deny that the then-existing state of emergency became even more grave and and the possibility of anarchy loomed large. Immediate action by the Government was required to ensure that the security and economic life of the country were not to be destroyed. On the 15th May, 1969, the Yang di-Pertuan Agong proclaimed a further state of emergency under Article 150 of the Constitution and at the same time acting under Clause (2) of that Article he promulgated the Emergency (Essential Powers) Ordinance, 1969 giving himself wide powers for security public safety, the defence of Malaysia, the maintenance of public order and of supplies and services essential to the life of the community. Parliament had been dissolved prior to the general

elections which commenced on the 10th May, 1969. The Yang di-Pertuan Agong also suspended elections to the Dewan Rakyat and all State Assemblies that had not yet been completed. Parliament therefor stood dissolved until it was reconvened on the 20th February, 1971. In the early part of this decade murders, kidnapping, robberies, the use of firearms and other serious offences began to cause alarm. Criminal elements became more sophisticated in their nefarious activities and they raided banks and committed other daring crimes as a result of which there were losses of lives and property. The safety of our people and the protection of their property were at stake and a government which fails or neglects to take whatever measures it can to secure such safety and protection will not command the confidence of the people. Besides being concerned with the lives and safety of our people and their property the government also had to ensure that those who had to ensure that those who had come to invest in our country are able to live and work here without any fear or harm to their lives and property. Foreign investment is needed to generate economic growth so that there can be upliftment of the standard of living of our people and if the government is unable to take measures which are effective enough to safeguard the security and economic life of the nation, then this will be to the detriment of our people.

Fresh in our minds are the incidents which have invited varied comments by the local and foreign press. It is indeed regrettable that we have to be reminded of these incidents of violence. The attack on the Beranang Police Station in December 1978 where a policeman was seriously injured and 15 weapons seized was carried out by raiders who are believed to comprise a part of the underground elements directed to reinforce the communist terrorists with fresh supplies of arms and ammunition. The brutal murder of one policeman and the wounding of another in Seremban in February 1978 was yet another act of atrocity by underground elements with a view to instil fear in the hearts of the people and is clear evidence of their incessant efforts to intimidate members of the security forces. In the heart of the federal capital the Inspector-General of Police was assassinated and in Ipoh the Chief Police Officer of Perak and his driver were murdered while on the way home from work. These heinous executions though performed by the underground subversive elements were done in concert with their counterparts in hiding in the rural areas.

The promulgation of the Emergency (Essential Powers) Ordinance, 1969 must be viewed against this background and in the light of all these factors. Section 2 of that Ordinance contains provisions empowering the Yang