

EXCLUDING RELIGION FROM POLITICS AND ENFORCING RELIGIOUS HARMONY—SINGAPORE-STYLE

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The *Maintenance of Religious Harmony Act* is a unique feature in the legal landscape of Singapore. The statute—an important part of the Singapore government’s large and extensive arsenal of legal instruments to regulate inter-ethnic-religious relations in the country—gives the executive untrammelled discretion to curb political expression and political activity in the interests of maintaining religious harmony. Placed against the backdrop of its political developments, this article explores the political motives for the introduction of the statute, examines the exact nature of its structure and scope, and compares it against other legal instruments that perform similar political control. A particular focus is upon how the statute underscores the thinking behind Singapore-style state paternalism, and reflects its political leadership’s deep distrust of the electorate, and instinct to restructure voting behaviour and party politics. This article also reflects on the adverse effect of such enforced stricture on otherwise legitimate political activities by religion-linked organisations in Singapore.

I. INTRODUCTION

The nature of the ethnic-religious composition of the population, and pervasive government fears of division along ethnic or religious lines, have led to the enshrinement of a strict state-enforced doctrine of religious harmony in Singapore. Singapore’s¹ very brief history of relatively minor racial-religious conflicts of the 1950s and 1960s² occupies an iconic status in the official presentation of its history. This period of history has been seized upon as the basis of the fears on the part of the dominant People’s Action Party (PAP) political leadership³ that religious sentiments could

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¹ Singapore is a multi-ethnic secular state where religion is largely coincidental with ethnicity. The official categorisation has led to the perpetuation of the stereotypical image of Chinese as practising “Buddhism or Daoism”, the Indians as “Hindus”, and Malays as “Muslims”, unless expressly stated otherwise. Only the Christians do not fit this ethnic mould: Khun Eng Kuah, “Maintaining Ethno-Religious Harmony in Singapore” (1998) 28(1) *J. Contemp. Asia* 103 at 104.

² See *infra* notes 19 to 21, and accompanying text. These should be regarded as very minor when compared to other racial-religious conflicts in post-World War II newly-independent countries.

³ Ever since Singapore’s secession from the Federation of Malaysia in 1965, the PAP has been in continuous hegemonic governance and political dominance in Singapore.

be exploited for political ends, and of the potential concomitant serious effects on Singapore's political stability and economic survival.⁴

The *Maintenance of Religious Harmony Act* (MRHA),⁵ enacted in 1990 and commenced in 1992, is a unique piece of legislation. The Act was enacted after a series of documents starting with the 1986 Internal Security Department (ISD) reports on how religious groups were becoming over-zealous in their proselytising.⁶ Research and consultation processes leading up to the enactment of the Act included an ISD report on the security perspectives pertaining to religion,⁷ a White Paper tabled in 1989,⁸ a Select Committee Report,⁹ and extensive parliamentary debate at the time of the Bill's introduction.

The Act was enacted with the avowed aims to prevent causing feelings of enmity, hatred, ill will or hostility between different religious groups, as well as to prevent communal politics from emerging under the guise of religion.¹⁰ It extends to include allowing the government to take steps against what it perceives to be factional political activity along racial-religious lines, defuse situations which threaten to escalate into a conflict of religious sentiments, and do so in a manner that is discreet and prompt.

And yet, given all the anxiety and soul-searching debates leading up to the enactment of the Act, in the 17 years following its inception, the workings of the MRHA have gone undetected by the public eye.¹¹ No restraining order has ever been issued under the Act.¹² This was confirmed by the Minister for Home Affairs in Parliament in 2007.¹³

⁴ It is difficult to find another existing regime that can match Singapore's continuous record of political stability that also comes with extensive and comprehensive socio-economic development. There has been an uninterrupted upward mobility in socio-economic fields since the 1960s.

⁵ (Cap. 167A, 2001 Rev. Ed. Sing.).

⁶ Sing., *Parliamentary Debates*, vol. 54, col. 1148 (23 February 1990) (First Deputy Prime Minister and Minister for Defence Mr. Goh Chok Tong). The first draft of the Bill was prepared in June 1987: Sing., *Parliamentary Debates*, vol. 54, col. 1055 (22 February 1990) (Professor S. Jayakumar). In August 1987, the Ministry of Community Development commissioned a research team from the National University of Singapore (from the Institute of Policy Studies and the Department of Sociology) to conduct a research project on religion and religious revivalism in Singapore, culminating in five papers, the last being the "Report on Religion and Religious Revivalism in Singapore" cited in the White Paper relating to the Bill: *Maintenance of Religious Harmony White Paper*, Cmd. 21 of 1989 at footnote 3.

⁷ See *ibid.*, *Maintenance of Religious Harmony White Paper*, Cmd. 21 of 1989 at Annex.

⁸ This was followed by 71 representations on the *Maintenance of Religious Harmony Bill* (Bill No. 1/1990). This Bill lapsed because Parliament was prorogued. The Bill (Bill No. 14/1990) was reintroduced on 12 June 1990 by the Minister for Home Affairs (Professor S. Jayakumar): Sing., *Parliamentary Debates*, vol. 56, col. 113 (12 June 1990) (Professor S. Jayakumar).

⁹ This was issued after six meetings in which it received oral evidence four times and 79 written representations: *Report of the Select Committee on the Maintenance of Religious Harmony Bill (Bill No. 14/1990)* at paras. 6-7.

¹⁰ Sing., *Parliamentary Debates*, vol. 56, col. 325 (18 July 1990) (Professor S. Jayakumar).

¹¹ The MRHA remains under the purview of the ISD, which is indicative of its critical importance as a regulatory mechanism, and in political control. See online: Singapore Government Directory interactive (SGDi) <<http://sgdi.gov.sg>>.

¹² However, it should be noted that a Straits Times article, dated 12 May 2001, states that "several religious leaders who strayed beyond the out-of-bound markers have been hauled up by the police and warned, though": See M. Nirmala, "Keeping faith—and celebrating differences" *The Straits Times [of Singapore]* (12 May 2001).

¹³ As recently as February 2007, this report was corroborated by Minister for Home Affairs Mr. Wong Kan Seng's disclosure that the Government "came close to invoking the Act on several occasions to stop local religious leaders from mixing religion with politics and putting down other faiths". Again,

Is the Act therefore a mere policy posturing? Far from it. I argue that despite the fact that no restraining order has been issued to date, the Act occupies more than just mere policy posturing¹⁴ within the executive's extensive legal framework of close political control of the role of religion in society.

The Act reflects the political leadership's heavily paternalistic instinct to restructure voting behaviour and mould politics to its vision.¹⁵ It expresses the ideological position of the government, underscores the political leadership's deep distrust of the electorate and opposition. More importantly, the Act serves to cleanse religion from the central political space.

The Act brings the regulation of religious harmony behind closed doors, given that the public is not privy to the instances in which the Minister has issued a warning to desist. Faced with an absence of judicial review and the surety of a consequent restraining order following a failure to comply, it is not surprising that those warned so far have not pressed the issue.¹⁶ The Act, despite its benign appearance, is not without the coercive force¹⁷ to keep religious leaders in line, or even to keep political debate out.

The Act removes religious influence from political contestation. It curbs organised collective political competition through outlawing engagement in politics by groups with religious links that are not specifically and officially designated as political. The Act thus obstructs political activism from religion-linked organisations, whilst at the same time softens the image by ensuring that it is less conspicuously linked to the discretionary powers of the government.

II. CRISIS CREATION?

To understand the scope and intention of the Act, it is necessary to canvass some of the historical background leading up to its enactment.

the religious leaders stopped their activities, after receiving warnings by the ISD: Sing., *Parliamentary Debates*, vol. 82, col. (12 February 2007) (Mr. Wong Kan Seng).

¹⁴ Minister for Home Affairs Mr. Wong Kan Seng specified three instances where he had contemplated invoking the MRHA. One instance related to mixing religion and politics when an Islamic leader had urged Muslims to vote for Muslim candidates during the 1991 General Elections. The other two related to occasions where one religious leader had criticised other faiths. In 1992, a Christian pastor was warned to refrain from criticising other faiths like Buddhism, Taoism and Catholicism through the pulpit and through publications, and in 1995, an Islamic religious leader was admonished for criticising a widespread Hindu belief that statues of their deity, Ganesha, could drink milk offerings, which the leader had labelled not a miracle but the work of the devil: M. Nirmala, "Govt reins in religious leaders" *The Straits Times [of Singapore]* (12 May 2001).

¹⁵ This also has very much to do with the PAP-government's vision of political participation as one of rational, informed choice undertaken by reasonable people.

¹⁶ At the time of parliamentary debate, Dr. Aline K. Wong said that "this Bill is a far kinder, gentler approach": Sing., *Parliamentary Debates*, vol. 54, col. 1076 (22 February 1990) (Dr. Aline K. Wong). Wan Hussin Bin Haji Zoohri of Aljunied GRC espoused the belief that "receiving the prohibition order alone would be enough to alert the person of the dangers of his/her actions or speech, if he/she truly appreciates the multi-religious, multi-racial nature and social climate of Singapore": Sing., *Parliamentary Debates*, vol. 54, col. 1123 (22 February 1990) (Encik Wan Hussin Bin Haji Zoohri).

¹⁷ The fact that it has been in the contemplation of the Minister to invoke the Act several times before suggests that the MRHA has an active role to play within the Government's scheme for regulating religious relations. Correspondingly, that all of those warned desisted before the situation deteriorated into the issuance of a restraining order suggests its latent force.

The ethnic-religious composition of the Singapore population, and pervasive government fears of division along ethnic or religious lines, have led to the enshrinement of a strict doctrine of religious harmony.¹⁸

Singapore is not without a history of racial-religious conflict. One of the most often cited examples of the dangers of racial or religious conflict in the official presentation would have to be the Maria Hertogh riots in December 1950. Essentially, it involved a custody dispute over a young girl of Dutch-Eurasian heritage who had been brought up as a Muslim in a Muslim family during the Japanese occupation, and had married under Muslim law. The dispute and its resulting court case caused a strain between Muslims and Christians, especially Europeans and Eurasians. The resulting division in public opinion eventually escalated into riots. The army was mobilised to restore order. Between the outbreak of sectarian violence and 13 December 1950, 18 people were killed, 173 were injured, 72 vehicles burnt and another 119 damaged.¹⁹

Following the Maria Hertogh incident, in the 1960s, “a small group of Malay extremists, the *Angkatan Revolusi Tentara Islam Singapura*, planned to overthrow the government by attempting to incite the Malays against the Chinese”.²⁰ Later, “the catalyst for the 1964 racial riot was the outbreak of violence during a procession in commemoration of the Prophet Mohammed’s birthday”.²¹

Given that Singapore became independent amidst tensions, it is not surprising that the political leadership has “adopted a very consistent policy since 1965 with regard to its religious policy”.²² Fears that religious sentiments could someday be exploited for political ends were cited as the driving force that motivated the introduction of the *Maintenance of Religious Harmony Bill* in Parliament on 15 January 1990.²³

¹⁸ *Maintenance of Religious Harmony White Paper*, Cmd. 21 of 1989 at paras. 4-5. The extent to which religious harmony forms a core concern of the Government is most starkly presented in the then First Deputy Prime Minister’s statement in 1990—“I consider racial and religious harmony as the most important bedrock of our society. If there’s no harmony, there will be no peaceful, prosperous Singapore—as simple as that”: Ho Ai Phang, “The Maintenance of Religious Harmony Bill” *The Mirror* (15 April 1990).

¹⁹ For a succinct summary of the events, see Chee Kiong Tong, “Religion and the State” in *Rationalizing Religion, Religious Conversion, Revivalism and Competition in Singapore Society* (Leiden: Brill, 2007) at 232. See also Kuah-Pearce Khun Eng, *State Society and Religious Engineering: Towards a Reformist Buddhism in Singapore* (Singapore: Times International: Eastern University Press, 2003) at 142-3. See also Michael Hill, “Conversion and Subversion: Religion and the Management of Moral Panics in Singapore” (Asian Studies Institute Working Paper no. 8, Victoria University of Wellington, 1999) at 9.

²⁰ Chee Kiong Tong, *ibid.* at 233; *supra* note 12.

²¹ Kuah-Pearce Khun Eng, *supra* note 19 at 143; *supra* note 12. The event was preceded by simmering Chinese-Malay tensions over the minority Malay community’s expectations of special rights reserved for Malays by the Constitution of the Federation of Malaya in 1957 that did not materialise, and apprehensions about Malay domination following the merger with Malaya. The rioting took the lives of 22 people and injured some 454 people; 256 people were arrested for unlawful assembly and rioting, while 1,579 were arrested for breaking the imposed curfew. Again, in September 1964, when a trishaw rider was stabbed to death in Geylang, rioting began, lasting another 5 days and nights, killing 12 people, injuring 109, causing 240 to be arrested for rioting and over 1000 for curfew breaking. See also Chee Kiong Tong, *supra* note 19 at 233-4; *supra* note 12.

²² Khun Eng Kuah puts forward that the government was convinced that the only way to prevent sectarian strife from destroying the fragile ethno-religious fabric of the nation was to spell out clearly the roles and responsibilities of each religion and their organisations in Singapore: Khun Eng Kuah, *supra* note 1 at 106.

²³ Specifically, Professor S. Jayakumar cited the uncertainty of the continued preservation of religious harmony and tolerance (col. 1048), the ease with which religious sensitivities can escalate into violence

However, events in the 1980s injected a more complicated political complexion into the exact political motivations behind the introduction of the Bill. In the 1980s, leading to the introduction of the Bill, it was alleged in official presentation that there was a phenomenon of aggressive proselytisation by some Christian evangelical groups²⁴ and Dakwah members.²⁵ Between the debate in Parliament and the White Paper of 1989, a dizzying number of examples of religious tension, both local and foreign, were raised,²⁶ the obvious official purpose of which seemed to demonstrate how religious conflict was pervasive around the world, and how religious harmony in Singapore was not to be taken for granted given its fragility.²⁷ The Maria Hertogh riots of December 1950 were accentuated in official presentation of the history of

(col. 1049), and the presence of people whose conduct can cause “considerable tensions and problems” (col. 1049) as some reasons for introducing the Bill: Sing., *Parliamentary Debates*, vol. 54, col. 1048-9 (22 February 1990) (Professor S. Jayakumar). One of the fundamental convictions that underlie the MRHA remains that religious differences are private whereas politics is a secular affair and should not be allowed to be mixed with religion so as to avoid inflammatory situations: Sing., *Parliamentary Debates*, vol. 54, col. 1169 (23 February 1990) (Mr. S. Dhanabalan); *Maintenance of Religious Harmony White Paper*, Cmd. 21 of 1989 at para. 5.

²⁴ Christianity showed rapid growth, especially amongst younger, more highly educated Chinese from wealthier, English-speaking backgrounds so that Christians in 1988 were thought to comprise between 13 and 18% of the population compared to just 10% in 1980: Michael Hill, *supra* note 19; *supra* note 12. Fears were expressed of a significant growth of Christianity due to a heightened atmosphere of religious revivalism and Christian proselytising and conversions to Christianity: *Maintenance of Religious Harmony White Paper*, Cmd. 21 of 1989 at para. 10:

In recent years, there has been a definite increase in religious fervour, missionary zeal, and assertiveness among the Christians, Muslims, Buddhists and other religious groups in Singapore. Competition for followers and converts is becoming sharper and more intense. More Singaporeans of many religions are inclining towards strongly held exclusive beliefs, rather than the relaxed, tolerant acceptance of and coexistence with other faiths;

Supra note 6.

²⁵ The established Buddhist-Daoist, Islamic and Hindu communities were dissatisfied with the proselytisation carried out by Christian evangelists. Likewise, some Muslims saw the Dakwah members and movement as a threat to their Islamic practice. The Buddhist and Hindu groups, allegedly, were forced to respond to this intense religious competition: Khun Eng Kuah, *supra* note 1 at 107. With the allegation of Christian proselytising, there was also allegation of negative reactions from the other religions, such as the Muslims, who felt obliged to respond to the aggressive proselytising with actions of their own: *Maintenance of Religious Harmony White Paper*, Cmd. 21 of 1989 at Annex in paras. 5-6. Significantly, the strongest support for the Bill came from the Hindus and Buddhists. Some sections of the Muslim and Christian communities were wary and wanted both more clarification and safeguards. Though the Bill lapsed when Parliament was prorogued on 21 April 1990, it was reintroduced subsequently and eventually passed after extended consultation: Vineeta Sinha, “Theorising ‘Talk’ about ‘Religious Pluralism’ and ‘Religious Harmony’ in Singapore” (2005) 20(1) *J. Contemp. Religion* 25 at 31.

²⁶ Foreign examples include the Hindu-Sikh tensions in India, holy war in Sri Lanka, Fiji coup, Lebanese instability, Northern Ireland Protestant-Catholic tensions, Philippine Muslim-Christian rivalry, Iran-Iraq war, the situation in Armenia and Azerbaijan, as well as Islamic fundamentalism in Malaysia. Local examples referred to included Christian proselytisation outside a Hindu temple, the distribution of Christian pamphlets that translated the Christian God as “Allah”, the putting up of notices listing the names of Muslims who had converted to Christianity in mosques, the distribution of a book questioning the authenticity of the bible, disputes over the burial of Muslim converts, the Muslim-Ahmadis dispute, intra-Hindu sectarianism, Protestant-Catholic tensions, “social action” by Catholic priests, provocative political speeches by foreign Muslim theologians, Hindu and Sikh involvement in activism in politics in India, the Maria Hertogh riots and the Marxist Conspiracy of 1987. See further, *Maintenance of Religious Harmony White Paper*, Cmd. 21 of 1989.

²⁷ The persistent reference to the Maria Hertogh riots highlights how the occurrence of pre-Independence racial-religious riots has traumatised the psyche of the government, accounting for its obsession with the real possibility of recurring racial-religious cracks.

racial riots in Singapore.²⁸ Fears of religion taking a place in the political arena were expressed.²⁹

The message then seemed to be: in order to avoid charges of communalist politics, the state would have to proclaim and maintain its neutrality in religious disputes, and be given an exclusive and unchallenged role to do so.

It was raised in Parliament that the 1987 Marxist Conspiracy saga took place within the context of such developments.³⁰ On 21 May 1987, sixteen people were arrested under Singapore's *Internal Security Act* on the grounds of their alleged connection with an allegedly clandestine communist network.³¹ The arrests sparked

²⁸ To Michael Hill, "[t]he Maria Hertogh case has become something of an icon in the Singapore state's presentation of its history and was to be revisited on subsequent occasions as an instance of the destabilizing potential of religious conversion": Michael Hill, *supra* note 19; *supra* note 12. That reading of the incident is substantiated by the Ministry for Information's presentation of the Maria Hertogh riots in relation to the need for the MRHA:

Although these events took place more than twenty years ago, we must ensure that they do not happen again because racial and religious harmony is absolutely essential for our survival as a nation. We should not forget that racial and religious harmony is very fragile

Ministry of Information and the Arts, *The Need for the Maintenance of Religious Harmony Act* (Singapore: Resource Centre, Publicity Division, Ministry of Information and the Arts, 1992) at 2. The pre-independence experience of inter-religious and inter-racial tensions escalating into violence has left in its wake a conviction on the part of the older generation MPs that the younger generation should never forget the trauma of religious division: See *Maintenance of Religious Harmony White Paper*, Cmd. 21 of 1989 at para. 13 for insistence that the people not "assume that religious harmony will persist indefinitely as a matter of course", and how "conscious efforts are necessary to maintain it". See also Parliamentary Debates for repeated references to the fragility of religious harmony and its antecedents in the racial riots around the period leading to Independence: *Supra* note 6.

²⁹ This attitude is aptly summed up by Soren Christensen as:

[t]he state was not to be viewed of racial or religious affiliation, but purely in terms of neutrality and equality—as the impartial arbiter who promises justice and progress to all and guarantees fairness and even handedness in relation to all races and religions

Soren Christensen, "The Conduct of Religious Conduct: Ambiguities of Secularism in Singapore" at 2, online: <http://www.ku.dk/satsning/Religion/sekularism_and_beyond/pdf/Christensen_Paper.pdf>. It should be noted that Singapore has a party structured along largely ethnic-religious lines—the Pertubohan Kebangsaan Melayu Singapore (PKMS).

³⁰ A detailed accounting of the events can be found in *Silencing All Critics: Human Rights Violations in Singapore* (New York: Asia-Watch, 1989) [Silencing All Critics]. See also Michael Hill, *supra* note 19 at 9; *supra* note 12; Khun Eng Kuah, *supra* note 1 at 111-13.

³¹ See the account presented by Michael Hill and Lian Kwen Fee on the events: On 21 May 1987, sixteen people were arrested under Singapore's *Internal Security Act* on the grounds of their alleged connection with an allegedly clandestine communist network (organisations with which the individuals were connected included the Student Christian Movement of Singapore, the Young Christian Workers' Movement, the National University of Singapore Catholic Students' Society, Singapore Polytechnic Catholic Students' Society, the Justice and Peace Commission of the Catholic Church and a Catholic Welfare Centre whose main activity was to run a refuge for Filipino maids). Of special significance was the fact that those arrested were English-educated, middle-class graduates who were engaged in Christian social action programmes: Michael Hill and Lian Kwen Fee, *The Politics of Nation Building and Citizenship in Singapore* (London and New York: Routledge, 1995) at 206. See also Joseph B. Tamney, *The Struggle Over Singapore's Soul: Western Modernization and Asian Culture* (New York: Walter de Gruyter, 1996) at 32-3, cited in Kevin Y.L. Tan and Thio Li-ann, *Tan, Yeo & Lee's Constitutional Law in Malaysia and Singapore*, 2nd ed. (Singapore: Butterworths Asia, 1997) at 923. In a press statement dated 26 May 1987, the Government claimed to have "uncovered a Marxist conspiracy to subvert the existing social and political system in Singapore": "Background on the case" *The Straits Times [of Singapore]* (13 September 1989). It also disclosed that it had been keeping tabs on the persons that had been arrested as early as two years before the arrests. In June of the same year, six further arrests were made.

a furore of public opinion including, amongst other dissatisfactions, allegations that the detainees had been physically and psychologically abused, and of miscarriages of justice.³² Furthermore, when the Court of Appeal ruled in favour of the detainees in a subsequent landmark decision,³³ the government was prompted to push through an immediate constitutional amendment³⁴ that excluded judicial review from all preventive detention cases under the *Internal Security Act*.³⁵

Very soon after the May 1987 Marxist Conspiracy arrests, the *Maintenance of Religious Harmony Bill* was drafted in June 1987. There were speculations that the Bill was introduced as a reactionary measure against the debacle,³⁶ to justify the official action,³⁷ or was the culmination of the government's determination to curtail political criticism,³⁸ or even a deliberate "crisis creation" engineered to retain social control.³⁹

³² For a more extended account of the saga see *Silencing All Critics*, *supra* note 30 at 18-27; *supra* note 23. See also Yee Chee Wai, Ho Tze Wei Monica & Seng Kiat Boon Daniel, "Judicial Review of Preventive Detention under the Internal Security Act—A Summary of Developments" (1989) 10 *Sing. L. Rev.* 66 at 66:

... Fifteen of them were served with detention orders. The remaining seven, four from the first group arrested and three from the second were released in June and July respectively. In September, nine of those still detained were freed. By December, all but one of the detainees were released. Their detention orders were suspended as the government was satisfied that they were 'unlikely to resume subversive activities and no longer posed a security threat'. In April 1988, eight of those released between June and December 1987 were re-arrested because they had issued a joint press statement to 'clear their names' and to deny that they were ever involved in a Marxist conspiracy. The suspension of their detention orders was revoked. Four of those who were re-arrested applied to the High Court for writs of habeas corpus. Their applications were dismissed and they appealed to the Court of Appeal.

³³ The Court of Appeal ruled for the appellants on technical basis that the respondents had not discharged their burden of proving that the President was satisfied as required by s. 8(1) of the Act before the Minister made the detention orders: *Chng Suan Tze v. The Minister of Home Affairs & Ors.* [1989] 1 M.L.J. 69 at 90, [1988] *Sing. L.R.* 132 (*Sing. C.A.*) [*Chng Suan Tze*]. However, reacting to dicta in *Chng Suan Tze* that "it is the objective test that is applicable to the review of the exercise of discretions under ss. 8 and 10" of the ISA instead of the subjective test: *Chng Suan Tze, ibid.* at 78, Parliament amended the ISA to restore the supremacy of the subjective test in the course of a single day.

³⁴ The *Constitution of the Republic of Singapore (Amendment) Bill* (Bill No. 11/1989) was "necessary because the Court of Appeal in its recent judgment of December 1988 departed from long standing principles of law governing such judicial review": *Sing., Parliamentary Debates*, vol. 52, col. 465 (25 January 1989) (Professor S. Jayakumar).

³⁵ Consequently, *Teo Soh Lung v. Minister of Home Affairs & Ors* [1990] 2 M.L.J. 129, [1990] *Sing. L.R.* 40 (*Sing. C.A.*), which was substantially similar to *Chng Suan Tze, supra* note 33, had to be decided differently. The role of judicial review with regard to the ISA was curtailed. The role of judicial review was to be entirely excluded from the subsequent MRHA.

³⁶ The Member of Parliament for Cheng San raised in Parliament the reservation that whereas the objective behind the Bill might be fair, there were some misgivings about the timing and intention of the Bill, coming after the arrest of Vincent Cheng and the Marxist group: *Sing., Parliamentary Debates*, vol. 54, col. 1058 (22 February 1990) (Mr. Chandra Das).

³⁷ The opposition NCMP Dr. Lee Siew-Choh alleged that "it is an attempt, a belated attempt by Government to justify the arrests of the so-called Marxists": *Sing., Parliamentary Debates*, vol. 54, col. 1109 (22 February 1990) (Dr. Lee Siew-Choh).

³⁸ Another version emphasises the socio-economic orientation of the leftist-Christian movement, putting it that the Government had tried to curtail criticism of Singapore's economic policy in a trend that "turned the Government's attention from trying to use religion to trying to contain the religious institution": Joseph B. Tamney, *supra* note 31 at 33; *supra* note 24. Soren Christensen advanced the argument that the MRHA "springs from the realization that the new enthusiasm for religion is being expressed in ways never intended by the Asian values strategy": Soren Christensen, *supra* note 29 at 9; *supra* note 22.

³⁹ In its most elaborate form, Michael Hill puts it that the Marxist Conspiracy was one in a string of "crisis creation" that the Government engineered to retain social control of the country by perpetuating a sense of the nation's vulnerability in order to gain the cooperation of the population. Michael Hill goes so

What is certain is that at the time of the introduction of the Bill, reservations abounded as to the exact political motives for its introduction. Official denial came fast and furious.⁴⁰ The official presentation of the rationales of the Bill should not be understood without bearing in mind such political background.

III. DISTRUST OF THE ELECTORATE?

The government has raised the rationale for excluding religion from politics - the assumption that once religion is introduced into the political arena, irrationality and extremism must inevitably follow.⁴¹

It seems that the rationales could be expressed as follows. Singapore, being a multi-ethnic, multi-religious society, must not take for granted the religious harmony obtained in Singapore.⁴² The state has a pragmatic stake in making sure that religious differences are resolved before they result in conflict. Conflict would not be conducive to the maintenance of societal and economic stability, not to mention its serious effect on the security of the nation. The government thus has to insist on maintaining a neutral, non-partial position with regard to the different religions.⁴³

What should be noted is that the official presentation has proffered no reason as to why religious discussion conducted through private channels should be any more rational or controllable than those aired in public forums. Similarly, it is unclear how religious debate in the political arena is any more inflammatory than discussing religious issues in the newspaper, short of the distinguishing factor that political

far as to put forward the thesis that in the absence of any overt evidence of inter-communal hostility, religion has become a symbolic focus around which anxieties pertaining to ethnic divisions have been mobilised: Michael Hill, *supra* note 19 at 6 and 9; *supra* note 12.

⁴⁰ The PAP political leadership issued a challenge to the Opposition parties to make the Marxist Conspiracy an election issue before the September 1988 elections: Sing., *Parliamentary Debates*, vol. 54, col. 1111 (22 February 1990) (Professor S. Jayakumar). This was not taken up; Dr. Lee Siew-Choh instead called for referendum on the single issue of the arrests: Sing., *Parliamentary Debates*, vol. 54, col. 1111 (22 February 1990) (Dr. Lee Siew-Choh). See also *Maintenance of Religious Harmony White Paper*, Cmd. 21 of 1989 at para. 10.

⁴¹ See *e.g.* Sing., *Parliamentary Debates*, vol. 54, col. 1088 (22 February 1990) (Mr. Wong Kan Seng).

⁴² In Vineeta Sinha, *supra* note 25 at 25, the author raises the issue of "taken-for-granted statements about 'religion', 'religious pluralism' and 'religious harmony' in Singapore". See also *supra* note 19.

⁴³ Some who supported the Bill echoed assumptions that religion is separate from the secular and therefore should have no place to play in the politics of multi-ethnic, secular, Singapore. Dr. Tay Eng Soon, for example, voiced his belief that the "unique role and purpose of all true religions" is to "minister to the personal and spiritual needs of individuals and to make them morally upright". In Singapore, its electorate is multi-religious. It would make no sense for a person to enter the political arena on a religious platform when, according to Dr. Tay, the person "cannot take sides in this matter and he must serve all of them" who constitute his electorate: Sing., *Parliamentary Debates*, vol. 54, col. 1065-66 (22 February 1990) (Dr. Tay Eng Soon). Such reasoning may be shaky. The very existence of the Malay minority party, Pertubohan Kebangsaan Melayu Singapore (PKMS), shows that political parties structured along ethnic-religious lines can legitimately exist and articulate ethnic minority interests in Singapore without inevitably degenerating into a state of tension. See also Thio Li-ann, "The Right to Political Participation in Singapore: Tailor-Making a Westminster-Modelled Constitution to Fit the Imperatives of 'Asian' Democracy" (2002) 6 S.J.I.C.L. 181 at 199; Thio Li-ann, "Singapore: Regulating Political Speech and the Commitment 'To Build A Democratic Society'" (2003) 1(3) Int'l J. Const. L. 516 at 519. See also Vineeta Sinha, *ibid.* at 28; *supra* note 18. An alternative viewpoint to put forward would be that religious harmony could be enhanced by productive discourse aired through religious representation in the political arena.

debate is more difficult to censor or police than in the other forums,⁴⁴ and that political debate has a wider audience than other channels.

In fact, the government has intervened in religious issues on occasions, in instances such as when the activity is perceived to pose a threat to national security or public order, or, to the more sceptical, a threat to the political dominance of the political leadership. The government's appropriateness as the final arbiter of inter-religious relations could become compromised when it is seen to be utilising the doctrine of religious harmony to cut out political discourse.

This becomes especially so in areas where the sharp separation between religion and politics blurs in issues such as gambling or abortion. The case of *Chan Hiang Leng Colin and Others v. Minister for Information and the Arts*⁴⁵ exemplifies how what is perceived as political conduct for the state, and therefore justifies state intervention, could be a matter of conscience and religion for the citizens.

Instead, what seems clear is that in enacting the MRHA, the state has taken upon itself the responsibility for arbitrating between what constitutes the political, and what constitutes religion. An examination of the statute will thus be helpful in yielding an insight into the exact nature of the structure that the government has put in place for regulating inter-religious relations in Singapore.⁴⁶

IV. FEAR OF MASS MOBILISATION OF RELIGIOUS ORGANISATIONS?

How then does the Act fit into the legal and political landscape of the government's religious policies?⁴⁷ What situations necessitate the broad language of the MRHA and the wide discretionary powers conferred on the Minister, and which cannot be

⁴⁴ Singapore's regulatory framework on the mainstream press is highly sophisticated. It has attracted persistent criticisms for being suppressive on the press and consequently being accused of its anti-liberal affairs in controlling the accessibility and dissemination of information to the public. The current press ownership regulations under the *Newspaper and Printing Presses Act* (Cap. 206, 2002 Rev. Ed. Sing.) does not promote the perception that the printing press in Singapore is independent and free from political influence. Reporters Without Borders ranked Singapore 147th out of 167 countries in its annual Worldwide Press Freedom Index in 2004: See Reporters Without Borders, "Third Annual Worldwide Press Freedom Index", online: <http://www.rsf.org/IMG/pdf/Asia_index_Eng_2004.pdf>. In 2005, Singapore was ranked 140th: See Reporters Without Borders, "Worldwide Press Freedom Index 2005", online: <http://www.rsf.org/IMG/pdf/CM_2005_As_Eng.pdf>. In 2006, Singapore was ranked 146th, 22 ranks above the lowest ranked North Korea at 168th: See Reporters Without Borders, "Worldwide Press Freedom Index 2006", online: <http://www.rsf.org/IMG/pdf/cm2006_as-2.pdf>. Freedom House in 2006 placed Singapore at position 148 out of 194 rankings in world press freedom index, therein labelling Singapore's status of press freedom as "not free" alongside 66 other countries: See Freedom House, "Freedom of the Press 2006", online: <<http://www.freedomhouse.org/uploads/PFS/PFSGlobalTables2006.pdf>>. See also Ong Soh Chin, "Corruption in Govt? Straits Times sure to expose it: Vivian" *The Straits Times [of Singapore]* (23 March 2007); Ivan Lim, "The Singapore Press and the Fourth Estate" in Abdul Razak, ed., *Press Laws and Systems in ASEAN States* 1st ed. (Jakarta: The Garuda Metropolitan Press: 1985) 101 at 105.

⁴⁵ [1996] 1 Sing. L.R. 617 at paras. E-G (Sing. C.A.). In this case, it was held that the refusal to perform National Service on religious grounds was a threat to national security and therefore not justiciable, rather than a religious issue.

⁴⁶ Given that the MRHA is the only legislation that specifically deals with the issue of religious harmony, the MRHA must stand at the centre of the government's religious policies, as well as its view of the role (and limitation of the role) of religion in politics.

⁴⁷ In foreign journals, the MRHA has been cited as an example of the repression of religion, or criticised as enlarging state powers of control to the detriment of civil liberties. See Silvio Ferrari,

dealt with by pre-existing legislation? Why was there a need for the Minister to possess such powers of restraint given that legislation such as the *Societies Act*,⁴⁸ the *Undesirable Publications Act*,⁴⁹ the *Internal Security Act*⁵⁰ and the *Sedition Act*⁵¹ were in place,⁵² and given that the Ministerial mandate excluded any possibility

“Individual Religious Freedom and National Security in Europe after September 11” (2004, Summer) B.Y.U.L. Rev. 357 at 370 and footnote 51, online: <http://www.olir.it/aretematiche/pagine/documents/News_0402_Ferrari.pdf>.

⁴⁸ See e.g. *Societies Act* (Cap. 311, 1985 Rev. Ed. Sing.), s. 24:

Minister may order dissolution of any society.

24.—(1) Whenever it appears to the Minister that—

- (a) any registered society is being used for unlawful purposes or for purposes prejudicial to public peace, welfare or good order in Singapore [...] the Minister may order that the society shall be dissolved.

⁴⁹ See e.g. *Undesirable Publications Act* (Cap. 338, 1998 Rev. Ed. Sing.), s. 12:

Offences involving objectionable publications

12. Any person who—

- (a) makes or reproduces, or makes or reproduces for the purposes of sale, supply, exhibition or distribution to any other person;
- (b) imports or has in his possession for the purposes of sale, supply, exhibition or distribution to any other person; or
- (c) sells, offers for sale, supplies, offers to supply, exhibits or distributes to any other person,

any objectionable publication (not being a prohibited publication) knowing or having reasonable cause to believe the publication to be objectionable shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 12 months or to both.

⁵⁰ See e.g. *Internal Security Act* (Cap. 143, 1985 Rev. Ed. Sing.), s. 8:

Power to order detention.

8. —(1) If the President is satisfied with respect to any person that, with a view to preventing that person from acting in any manner prejudicial to the security of Singapore or any part thereof or to the maintenance of public order or essential services therein, it is necessary to do so, the Minister shall make an order—

- (a) directing that such person be detained for any period not exceeding two years; [...]

(5) The Minister may by rules provide for the maintenance and management of any place of detention and for the discipline of persons detained therein.

⁵¹ See e.g. *Sedition Act* (Cap. 290, 1985 Rev. Ed. Sing.), s. 4:

Offences

4.—(1) Any person who—

- (a) does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act which has or which would, if done, have a seditious tendency;
- (b) utters any seditious words;
- (c) prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication; or
- (d) imports any seditious publication,

shall be guilty of an offence and shall be liable on conviction for a first offence to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding 3 years or to both, and, for a subsequent offence, to imprisonment for a term not exceeding 5 years; and any seditious publication found in the possession of that person or used in evidence at his trial shall be forfeited and may be destroyed or otherwise disposed of as the court directs.

⁵² Sing., *Parliamentary Debates*, vol. 54, col. 1077 (22 February 1990) (Mr. Abdullah Tarmugi):

I have thought, Sir, as those who oppose the Bill do, that existing laws were more than sufficient and adequate to handle the issues and problems addressed by the Bill. And indeed they are, Sir, in many respects. Take the Penal Code for instance. It is a crime for anyone to utter words to deliberately wound the religious feelings of any person. The ISA empowers the Government to detain anyone whose religious activity is likely to set religious groups against one another or to heighten differences and intolerance between religions. I found it difficult, Sir, if not futile, to argue that these provisions could not do the job we want in this Bill except, as pointed out by the Senior Minister of State for Education, on the question of religion and politics.

of judicial review?⁵³ Today, the question is compounded by section 298A of the *Penal Code*, which, in language not dissimilar to that of section 8 of the MRHA, criminalises acts prejudicial to the maintenance of harmony.⁵⁴

The Minister for Home Affairs, Professor S. Jayakumar, specified that the *Maintenance of Religious Harmony Bill* was introduced to address two problems, mainly “that followers of different religions must exercise moderation and tolerance and not instigate religious enmity and hatred”, and that “religion and politics be kept separate because religious leaders are seen to have a special status and their pronouncements will have an emotional effect on their flock”.⁵⁵

Under sections 8 and 9 of the Act, four particular behaviours are prohibited:

- a. causing feelings of enmity, hatred, ill-will or hostility between different religious groups;⁵⁶
- 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; or
- d. exciting disaffection against the President or the government while, or under the guise of, propagating or practising any religious belief.

The first limb (a) deals with the former problem, whereas the next three limbs (b), (c) and (d) deal with the latter. All four limbs fall under first of the main features of the Act, namely that the Minister has the power to issue restraining orders to those exhibiting any one of the above four behaviours. The second feature pertains to the establishment of a Presidential Council for Religious Harmony whose function is to consider and make recommendations on orders referred to the Council by the Minister under section 11 of the Act. More broadly, the Council is “to consider and report to the Minister on matters affecting the maintenance of religious harmony” in Singapore which are referred to the Council by the Minister or by Parliament.

See also *supra* note 30; Sing., *Parliamentary Debates*, vol. 54, col. 1103 (22 February 1990) (Dr. Lee Siew-Choh); Sing., *Parliamentary Debates*, vol. 54, col. 1178 (23 February 1990) (BG Lee Hsien Loong).

⁵³ See MRHA, s. 18:

Decisions under Act not justiciable

18. All orders and decisions of the President and the Minister and recommendations of the Council made under this Act shall be final and shall not be called in question in any court.

⁵⁴ The *Penal Code* (Cap. 224, 1985 Rev. Ed. Sing.) was amended by inserting, immediately after s. 298, the following section:

Promoting enmity between different groups on grounds of religion or race, and doing acts prejudicial to maintenance of harmony

298A. Whoever—

- (a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion or race, disharmony or feelings of enmity, hatred or ill-will between different religious or racial groups; or
- (b) commits any act which he knows is prejudicial to the maintenance of harmony between different religious or racial groups, and which disturbs or is likely to disturb the public tranquility,

shall be punished with imprisonment for a term which may extend to 3 years, or with fine, or with both.

⁵⁵ Sing., *Parliamentary Debates*, vol. 56, col. 325 (18 July 1990) (Professor S. Jayakumar).

⁵⁶ The phrase “prejudicing the maintenance of harmony” has been omitted in the final draft of the Bill: Sing., *Parliamentary Debates*, vol. 56, col. 597 (9 November 1990) (Professor S. Jayakumar).

Third, the right of judicial review is excluded. Fourth, the Minister's actions can only be checked by the President,⁵⁷ who has discretion only when the advice of the Presidential Council for Religious Harmony and the Cabinet differs.

While several explanations were proffered as to the question of the Act's necessity, the most pertinent that requires further exploration is the rationale that the Bill was less severe than criminal prosecution or detention under the *Internal Security Act*. Instead, it is "a limited mechanism to enable prompt and effective action to defuse potential explosive situations which could endanger our religious harmony".⁵⁸ Supposedly, its function was the discreet and prompt prevention of racial tensions, not criminal prosecution,⁵⁹ even though existing legislation could potentially have dealt with the problem notwithstanding a longer trial process or blunter instruments such

⁵⁷ The constitutional amendments were aimed at providing an elected President who was to act as a formal check on the executive and legislative powers, as a "second-key": Sing., *Parliamentary Debates*, vol. 56, col. 719 (3 January 1991) (Prime Minister Goh Chok Tong). The departure from the Westminster model was justified based on a distrust of the electorate's discernment in always returning a good slate of candidates. It acts as a provision for a worst-case scenario where a government which assumed office held different views from what the current ruling party foresaw to be the cornerstones of national stability in Singapore. The Presidency is not an executive power, but serves a watchdog function. The President can, for instance, veto budgets eating into certain reserves. These powers, however, are not in themselves unconditional. In safeguarding the population from bad government through the means of the President, Parliament was not content to repose complete trust in the integrity of the President either, as seen from the many restrictions on the President's powers. Such measures have led critics such as NMP Walter Woon to express the view that there is no point in having two keys to a door if you leave the door unlocked: Sing., *Parliamentary Debates*, vol. 63, col. 437 (25 August 1994) (NMP Walter Woon).

⁵⁸ Sing., *Parliamentary Debates*, vol. 56, col. 325 (18 July 1990) (Professor S. Jayakmar). See also Sing., *Parliamentary Debates*, vol. 54, col. 1069 (22 February 1990) (Dr. Arthur Beng Kian Lam); Sing., *Parliamentary Debates*, vol. 54, col. 1053 (22 February 1990) (Professor S. Jayakmar); *Maintenance of Religious Harmony White Paper*, Cmd. 21 of 1989 at paras. 31-33. See also MRHA, s. 8:

Restraining orders against officials or members of religious group or institution

8. —(1) The Minister may make a restraining order against any priest, monk, pastor, imam, elder, office-bearer or any other person who is in a position of authority in any religious group or institution or any member thereof for the purposes specified in subsection (2) where the Minister is satisfied that that person has committed or is attempting to commit any of 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; or
- (d) exciting disaffection against the President or the Government while, or under the guise of, propagating or practising any religious belief.

Section 9 of MRHA extends these powers over other persons.

⁵⁹ Sing., *Parliamentary Debates*, vol. 54, col. 1116 (22 February 1990) (Dr. Ong Chit Chung) and *Maintenance of Religious Harmony White Paper*, Cmd. 21 of 1989 at paras. 31-33. The penalty for breaching a restraining order is relatively mild. See MRHA, s. 16:

Penalty for breach of restraining order

16. —(1) Any person who contravenes any provision of an order made under this Part shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a second or subsequent offence, to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 3 years or to both.

- (2) Notwithstanding the provisions of any written law to the contrary, a District Court shall have the jurisdiction to impose the maximum penalty prescribed for an offence under this Act.

as detention. It was to be a “quick but less severe action against a transgressor to head off a problem”.⁶⁰

On the surface, such official rhetoric seems plausible. But there are other deeper issues. The terms “causing feelings of enmity, hatred, ill-will or hostility” contained in section 8(1)(a) of the MRHA, and “exciting disaffection” in section 8(1)(d) of the MRHA, echo the language used in section 3 of the *Sedition Act*.⁶¹ There, a seditious tendency includes, amongst other things, a tendency to “bring into hatred or contempt or to excite disaffection against the Government”, “to raise discontent amongst the citizens or the residents in Singapore”, or “to promote feelings of ill-will and hostility between different races or classes of the population of Singapore”.

In what way then, does the MRHA capture a mischief that is distinguishable from the *Sedition Act*?

Potentially, adopting a strict literalist approach, the difference between the MRHA and the *Sedition Act* is that section 3 of the *Sedition Act*⁶² only deals with racial and class activities, not religious ones. Yet, if that were the only reason, why not simply amend the *Sedition Act* by including the word “religion”, so that a seditious tendency would be extended to mean “to promote feelings of ill-will and hostility between different races, *religions* or classes of the population of Singapore”?

If the ill-will and hostility caused between different races and classes are perceived to be so much a threat that they justify criminal penalties, what then justifies a much more benign restraining order for the ill-will and hostility caused by a religious nature? There is no immediate answer to that.

The wording of the MRHA gives the mischief it attempts to arrest a broad definition, similar to the *Sedition Act*. The same serious definitional problems that

⁶⁰ *Maintenance of Religious Harmony White Paper*, Cmd. 21 of 1989 at para. 33.

⁶¹ See *Sedition Act*, s. 3:
Seditious tendency.

3. —(1) A seditious tendency is a tendency—
- (a) to bring into hatred or contempt or to excite disaffection against the Government;
 - (b) to excite the citizens of Singapore or the residents in Singapore to attempt to procure in Singapore, the alteration, otherwise than by lawful means, of any matter as by law established;
 - (c) to bring into hatred or contempt or to excite disaffection against the administration of justice in Singapore;
 - (d) to raise discontent or disaffection amongst the citizens of Singapore or the residents in Singapore;
 - (e) to promote feelings of ill-will and hostility between different races or classes of the population of Singapore. [...]

⁶² The *Sedition Act* is not without its own difficulties, particularly bearing in mind the contentious nature of what constitutes “seditious” activity. See Michael Hor & Collin Seah, “Selected Issues in the Freedom of Speech and Expression in Singapore: The Constitutional Position of Free Speech” (1991) 12 *Sing. L. Rev.* 296 at 336. Also, Scott L. Goodroad, “The Challenge of Free Speech: Asian Values v. Unfettered Free Speech, An Analysis of Singapore and Malaysia in the New Global Order” (1998) 9 *Ind. Int’l & Comp. L. Rev.* 259 at 284-5, in highlighting the heavy-handedness of the *Sedition Act*, argues:

A seditious tendency is broadly defined to include anything that will cause public dissatisfaction of the government or incite racial hatred within ... Singapore. The intent of the person who is charged with sedition is irrelevant so long as the act had or would have a seditious tendency. Additionally, the government need not show that the speech is likely to cause disorder. Only the tendency to cause disorder needs to be shown. There is also no need to show that the speech was ‘true or false.’ However, evidence showing a falsehood would increase the ‘seditious tendency.’

plague section 3 of the *Sedition Act* also trouble the MRHA. And unlike the *Sedition Act*, it will not get any better through possible generous judicial precedents over time—judicial review is excluded.

The phrase “committed or is attempting to commit” in section 8 of the MRHA means that the Minister may issue a restraining order once either the intent to transgress the MRHA, or the effect of transgression, is achieved. The word “tendency” is absent from the MRHA. The Minister does have to have evidence that the person has “committed”, or “is attempting to commit”, instead of a mere “tendency” or “likelihood to commit”. Similar to the *Sedition Act*, the truth or falsity of the speech is irrelevant. Only its effect on the citizens is of consideration.

Comparing the two, the MRHA seems marginally more benign, especially keeping in mind that one can be charged under the *Sedition Act*, and if convicted, jailed or fined. Whereas under the MRHA, unless one is foolhardy enough to violate the Minister’s orders, one will get away with merely a warning issued preemptively, or at worst, a restraining order. Thus, the MRHA is distinguishable by its non-punitive nature.⁶³

Another difference between the MRHA and the *Sedition Act* is that under the *Sedition Act*, an accused is entitled to a court trial. One can potentially be fined or jailed if found guilty under section 4 of the *Sedition Act*. But the trial process is bound to take longer than it would for the Minister to issue a restraining order. Thus, a distinguishing feature of the MRHA is that it allows the Minister to take much more “prompt and effective” action than the *Sedition Act* provides for. The MRHA is designed to nip the budding effects of inter-religious discord.⁶⁴

However, the case of *Public Prosecutor v. Koh Song Huat Benjamin and Anor*.⁶⁵ demonstrates just how artificial and thin the line between the *Sedition Act* and the MRHA is. In that case, an accused person was convicted of doing acts which had seditious tendency to promote feelings of ill-will and hostility between different races and classes of the population by posting anti-Malay and anti-Muslim remarks on his web log. Another accused person was convicted of doing an act which had a seditious tendency to promote feelings of ill-will and hostility between different classes of the population of Singapore by posting anti-Muslim remarks on a general discussion forum of a website. Both accused persons pleaded guilty. What is of note is that in listing the charge against the two accused persons, Senior District Judge Richard Magnus used the phrase “anti-Malay *and anti-Muslim*” on the first accused,

⁶³ However, the person against whom the restraining order is contemplated has limited options available to him. He has a week within which to make representations to the Presidential Council to convince them otherwise of the nature of the offending activity. According to V.S. Winslow:

Where the Act dispenses with the judicial process in the issuance of restraining orders, and extensions thereon, it makes up for it by providing a full process of natural justice, by requiring notice of the intention to make an order, with grounds, allegations of fact and the right to make representations, to be served on the person involved and the head or governing body of the group or institution to be named in the order, and copies of these are to be given to the Presidential Council which may give its views to the Minister, who “shall have regard to the views of the Council in making the order”.

V.S. Winslow, “The Separation of Religion and Politics: The Maintenance of Religious Harmony Act” (1990) 32 Mal. L. Rev. 327 at 330.

⁶⁴ Sing., *Parliamentary Debates*, vol. 54, col. 1191 (23 February 1990) (Dr. S. Vasoo).

⁶⁵ [2005] SGDC 272 (Sing. Dist. Ct) [*Koh Song Huat Benjamin*].

and solely “anti-Muslim” on the latter⁶⁶ when the *Sedition Act* makes no mention of the word “religion”. By any stretch of imagination, the word “Malay” denotes one’s ethnic race and “Muslim” one’s religion, yet in this case, the terms race and religion seemed to have been used interchangeably.

If the remarks were indeed anti-Muslim, promoting “feelings of ill-will and hostility”, then surely the accused person could have fallen under the purview of the MRHA as well. However, the Public Prosecutor chose to proceed on the grounds of a charge under the *Sedition Act*, against what seemed to be a case of irresponsible publishing but with hardly any seditious intent.⁶⁷ Could the bloggers not have been given the chance to retract before the situation escalated into a criminal charge?⁶⁸

Despite the enactment of the MRHA which was supposed to be for the prompt and efficient quelling of religious tensions, so that those sentiments do not become blown out of proportion, the Public Prosecutor seemed to have proceeded without fears of the religious sensitivities and the potential eruptions of such proceedings.⁶⁹

Another distinguishing feature of the MRHA is the total exclusion of judicial review.⁷⁰ Here, the *Internal Security Act* provides a better basis for comparison. Under section 8 of the *Internal Security Act*, the Minister is equipped with powers of detention⁷¹ or restraint in respect of the person’s activities,⁷² and can prohibit him

⁶⁶ *Ibid* at paras. 2 and 3.

⁶⁷ Although the Public Prosecutor and the Minister for Home Affairs are separate positions and serve separate functions, it is a practice in Singapore, that the police, upon completing their investigations, forward the investigation papers to the Public Prosecutor for his decision on whether to charge, and if so, what charges would be preferred against, the accused persons. It is reasonable to surmise therefore, the decision to charge the accused persons under the *Sedition Act* could not have been taken by the Public Prosecutor independent of the consideration of the MRHA.

⁶⁸ The decision to charge could have been made for the reason that the accused persons had already published their statement and caused harm, so that all that was reasonable to do was to prosecute. Since the exact contents of the publications were not made available, this point remains unclear.

⁶⁹ This should be contrasted with the arguments put up by members of Parliament supporting the Bill: “If a sensitive issue like religion is brought before the Court, the publicity that will result from the hearing itself would stoke the anger of affected religious groups and this could lead to religious unrest”: Sing., *Parliamentary Debates*, vol. 56, col. 610 (9 November 1990) (Encik Wan Hussin bin Haji Zohri). Similarly the White Paper raises the concern that “[a] Court trial may mean considerable delay before judgment is pronounced, and the judicial proceedings may themselves stoke passions further if the defendant turns them into political propaganda”: *Maintenance of Religious Harmony White Paper*, Cmd. 21 of 1989 at para. 31. Such argument is shown to be weak when one considers cases such as the seditious blogger in *Koh Song Huat Benjamin*, *supra* note 65, and the Jehovah Witnesses in *Chan Hiang Leng Colin and Others v. Minister for Information and the Arts* [1996] 1 Sing. L.R. 609 (Sing. C.A.) [*Chan Hiang Leng Colin*], and the lack of a consequent social degeneration into widespread violence or ill-sentiment following sentencing despite extensive discussion in the public forum of the newspaper. The public is not entirely unable to handle bringing cases involving religion into the judicial arena. The Maria Hertogh case, rather, seems very much to stand as an exception to the rule.

⁷⁰ Even a closed-court judicial review of executive decisions by the judicial arm will go far towards maintaining the check and balances, encouraging more confidence in the processes of justice in Singapore.

⁷¹ See and compare with MRHA, s. 8:

Restraining orders against officials or members of religious group or institution

8. —(1) The Minister may make a restraining order against any priest, monk, pastor, imam, elder, office-bearer or any other person who is in a position of authority in any religious group or institution or any member thereof for the purposes specified in subsection (2) where the Minister is satisfied that that person has committed or is attempting to commit any of the following acts:

(a) causing feelings of enmity, hatred, ill-will or hostility between different religious groups
[...]

⁷² See and compare with MRHA, s. 8(2):

from addressing public meetings or taking part in the activities of any organisation or association or from taking part in any political activities,⁷³ if the President is satisfied that it is necessary to prevent that person from acting in any manner prejudicial to the security of Singapore or to the maintenance of public order or essential services.

The *Internal Security Act* further provides for the prohibition of subversive materials under Chapter III, which provides for special powers relating to subversive publications. It should be noted that the invocation of the *Internal Security Act* seems to call for much more than required by the MRHA, and potentially results in the much more drastic measure of detention, rather than the milder restraining order.

The MRHA dispenses with the judicial process in the issuance of restraining orders, and extensions thereon. However, there are provisions requiring notice of the intention to make an order, with grounds, allegation of fact and the right to make representations, to be served on the person involved and the head or governing body of the group or institution to be named in the order. Copies of these are to be given to the Presidential Council which may give its views to the Minister, who “shall have regard to the views of the Council in making the order”.⁷⁴ However, these processes are shielded from sunlight by section 7 of the MRHA, which provides that the proceedings of the Council shall be secret.⁷⁵ All that is available is the decision of the Council, while the considerations that were of concern to the Council remain shrouded. Therefore, the result is that the OB (out-of bounds) markers—of what transgresses, and what does not transgress, the MRHA—remain incomprehensible⁷⁶ to the citizens. That is another distinguishing feature of the MRHA.

Having failed to convince the Presidential Council otherwise of the issue at hand, and unconvinced of the necessity of restraining one’s speech except for fear of

An order made under subsection (1) may be made against the person named therein for the following purposes:

- (a) restraining him from addressing orally or in writing any congregation, parish or group of worshippers or members of any religious group or institution on any subject, topic or theme as may be specified in the order without the prior permission of the Minister;
- (b) restraining him from printing, publishing, editing, distributing or in any way assisting or contributing to any publication produced by any religious group without the prior permission of the Minister;
- (c) restraining him from holding office in an editorial board or a committee of a publication of any religious group without the prior permission of the Minister.

⁷³ *Ibid.*

⁷⁴ See MRHA, s. 10:

Council to be informed of proposed restraining orders

10. —(1) A copy of any notice, grounds and allegations of fact given under section 8 (4) or 9 (4) shall immediately be given to the Council which may give its views, if any, on the proposed order to the Minister within 14 days of the date of the notice.
- (2) The Minister shall have regard to the views of the Council in making the order.

⁷⁵ See MRHA, s. 7:

Secrecy

7. —(1) Except as provided under section 15, the proceedings of the Council shall be secret.
- (2) No member or officer of the Council shall disclose or divulge to any person, other than the President, the Minister, the Secretary or any member of the Council, any matter which has arisen at any meeting of the Council unless he is expressly authorised to do so by the Minister.

⁷⁶ It has been suggested in parliament that if an open court session is inflammatory, then “making suitable amendments to trial procedures” could be a viable alternative to reposing power in the hands of a single Minister: Sing., *Parliamentary Debates*, vol. 54, col. 1175 (22 February 1990) (Mr. K. Shanmugam).

reprisals, the potential offender will be put in a quandary. If he should be foolhardy enough to violate his restraining order, he faces a penalty of a fine of up to \$10,000 or two years jail or both, under section 16 of the MRHA.⁷⁷ The only decision the judge is required to make in such circumstances is whether the accused has violated the order. Again, there is no room for judicial review of the validity of the order issued.

Given that the President only has a right to refuse to confirm the order if the Presidential Council and the Cabinet disagrees, the MRHA puts too much burden on the executive arm. In the absence of disagreement, the executive arm has virtually unchecked power to issue restraining orders.

V. TARGET—RELIGION IN POLITICS, NOT SUBVERSION

The second rationale provided during the parliamentary debates was that the MRHA was to fill in the lacuna in legislation on the issue of religion getting involved with politics.⁷⁸ The Act is distinguishable from the other existing legislation in that its focus is neither defining crime nor dealing with subversion.⁷⁹ The exact mischief that the MRHA attempts to capture is that religion could be used legally in a manner that produces adverse effects on the public, without being seditious.⁸⁰

Examples that have been raised as scenarios during the parliamentary debates where persons could fall foul of the Act for mixing religion and politics point to such a conclusion. A temple committee that says that car quotas are against his faith,⁸¹ and a preacher that tells the congregation that it should vote for a particular political party are misusing their religious positions and authorities, but not necessarily making seditious statements.⁸²

The MRHA thus seems to underscore the political leadership's ideology that politics in Singapore must only be conducted as a strictly secular activity, untainted by any affiliation with religion.⁸³ Any political discourse overlaid with a religious tone would potentially fall under the category of the misuse of religion.

⁷⁷ See MRHA s. 16:

Penalty for breach of restraining order

16. —(1) Any person who contravenes any provision of an order made under this Part shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$10,000 or to imprisonment for a term not exceeding 2 years or to both and, in the case of a second or subsequent offence, to a fine not exceeding \$20,000 or to imprisonment for a term not exceeding 3 years or to both.

(2) Notwithstanding the provisions of any written law to the contrary, a District Court shall have the jurisdiction to impose the maximum penalty prescribed for an offence under this Act.

⁷⁸ Sing., *Parliamentary Debates*, vol. 54, col. 1064-5 (22 February 1990) (Dr. Tay Eng Soon).

⁷⁹ Sing., *Parliamentary Debates*, vol. 54, col. 1178-80 (23 February 1990) (BG Lee Hsien Loong). The White Paper states that “the ISA was designed to combat subversion, *not the misuse of religions*” and that “[n]ot all uses of a religious group to advance political causes are necessarily subversive”: *Maintenance of Religious Harmony White Paper*, Cmd. 21 of 1989 at para. 32.

⁸⁰ The then BG Lee Hsien Loong said, “mixing religion with politics may not always be seditious, even if it is highly unwise”: Sing., *Parliamentary Debates*, vol. 54, col. 1179 (23 February 1990) (BG Lee Hsien Loong).

⁸¹ Sing., *Parliamentary Debates*, vol. 54, col. 1179 (23 February 1990) (BG Lee Hsien Loong).

⁸² Sing., *Parliamentary Debates*, vol. 54, col. 1179 (23 February 1990) (BG Lee Hsien Loong).

⁸³ See *supra* note 80.

And yet, the Act leaves the term “politics” undefined. The result is that the executive in Singapore arrogates to itself the role of the “final arbiter of whether any religious group or member thereof has promoted a “political” cause, for the purposes of section 8(1) [of the Act]”.⁸⁴ One main criterion that it may employ for such determination seems to be whether, in the executive’s view, any activity will cause social tension,⁸⁵ euphemism for the criterion that religious organisations should not be used for political purposes.⁸⁶ The OB markers therefore are left indeterminate.⁸⁷ This allows the Minister’s absolute discretion to be determinative,⁸⁸ thereby opening up the potential for executive abuse through cutting off political discourse coming from the religious direction.⁸⁹

The objective of the MRHA, in clearer terms, seems to be to prevent the use of mass political mobilisation by persons or leaders under the cloak of religious organisations with religious influence. It thus seems to serve to disallow otherwise legitimate political activities to promote a political cause from being conducted under a religious guise.⁹⁰

⁸⁴ V.S. Winslow, *supra* note 63 at 331. See also *Maintenance of Religious Harmony White Paper*, Cmd. 21 of 1989 at para. 26: “whether or not a pregnant woman wants to undergo an abortion, and whether or not a doctor or nurse wants to carry out abortions, are clearly issues of conscience, to be decided by each person for himself or herself”, whereas though “Jehovah’s Witnesses believe that their religion forbids them to do any form of National Service”, “[u]nder the law this is criminal conduct not conscientious objection”. This seems to suggest that because most religions recognise National Service as a secular issue, it cannot fall under the purview of religion. The distinction is vague and unconvincing. If religion is a matter of conscience (see Sing., *Parliamentary Debates*, vol. 54, col. 1065 (22 February 1990) (Dr. Tay Eng Soon)), then that conscience should not be subject to a majoritarian vote, but remain a personal choice. See also Thio Li-ann, “Control, Co-optation and Co-operation: Managing Religious Harmony in Singapore’s Multi-Ethnic, Quasi-Secular State” (2005) 33(2) *Hastings Const. L.Q.* 197 at 233.

⁸⁵ *Maintenance of Religious Harmony White Paper*, Cmd. 21 of 1989 at para. 26 states: “Some Christian groups consider radical social action, as practised in Latin America or the Philippines, to be a vital part of Christian faith. Whether or not this is the practice elsewhere, if para-religious social action groups become an active political force in Singapore, *they will cause heightened political and religious tensions.*”

[Italics are my own].

⁸⁶ See *supra* note 83. See also *Maintenance of Religious Harmony White Paper*, Cmd. 21 of 1989 at para. 22: “Members of religious groups may, of course, participate in the democratic political process as individual citizens. They may campaign for or against the Government or any political party. But they must not do so as leaders of their religious constituency”.

⁸⁷ Kent Roach argues that the MRHA potentially applies to “any involvement by religious leaders in political activities as well as the causing of feelings of hostility between different religious groups”, and in doing so, it “blurs several distinct rationales for regulating speech: concerns about hatred against identifiable groups, concerns about political involvement in religion, concerns about subversions and concerns about terrorism”: Kent Roach, “National Security, Multiculturalism and Muslim Minorities” (2006) 2 *Sing. J.L.S.* 405 at 415-6. See also *Chan Hiang Leng Colin*, *supra* note 69 at paras. 28-30.

⁸⁸ Such phrases as “political cause” or “activities that promote a political cause” seem to give too much latitude of interpretation considering that the issuance of restraining orders turns on the discretion of the Minister for Home Affairs: See s. 8(1)(b) of MRHA.

⁸⁹ The Minister’s decision can only be challenged by a single other person, namely the President, and only if the Presidential Council and Cabinet differ in their advice: MRHA, s. 12(3).

⁹⁰ See MRHA, s. 8:

Restraining orders against officials or members of religious group or institution

8. —(1) The Minister may make a restraining order against any priest, monk, pastor, imam, elder, office-bearer or any other person who is in a position of authority in any religious group or institution or any member thereof for the purposes specified in subsection (2) where the Minister is satisfied that that person has committed or is attempting to [...]

VI. EXCLUSION OF JUDICIAL REVIEW & UNTRAMUELLED EXECUTIVE DISCRETION

Objections were raised during parliamentary debates with regard to the width of section 8(1)(a) of the Act, which prohibits “causing feelings of enmity, hatred, ill-will or hostility between different religious groups”.⁹¹ The most alarming feature of the MRHA is perhaps that the Minister holds so much executive power under sections 8 and 9 of the Act, the exercise of which comes without the possible check of judicial review.⁹²

The only possible partial, and circumscribed, check on the Minister’s power lies with the President. If the President does not confirm the order, it will lapse.⁹³ However, under the same section, the President is obliged to act on the advice of the Cabinet except when the advice of the Cabinet is contrary to the Council’s recommendations.⁹⁴ The exclusion of judicial review means that the only partial check on the Minister’s powers arises only when the Cabinet disagrees with the Presidential Council.⁹⁵

(b) [carry] 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; [...]

⁹¹ Dr. Wong Kwei Cheong of Cairnhill, for example, expressed that “the phrase “causing feelings of enmity, hatred, ill-will or hostility” as defined in clause 8(1) of the Bill [connoted] a subjective view” and asked for the replacement of clause 8(1)(a) “with words which connote the objective view of a reasonable person”: Sing., *Parliamentary Debates*, vol. 54, col. 1098 (22 February 1990) (Dr. Wong Kwei Cheong). Dr. Koh Lam Son of Telok Blangah echoed Dr. Wong’s sentiments: Sing., *Parliamentary Debates*, vol. 54, col. 1101 (22 February 1990) (Dr. Koh Lam Son). Dr. Ong Chit Chung of Bukit Batok described the same phrase as “vague and subject to wide interpretation” since “[m]any things which one does wittingly or unwittingly could be perceived to be causing feelings of enmity or ill-will”: Sing., *Parliamentary Debates*, vol. 54, col. 1117 (22 February 1990) (Dr. Ong Chit Chung).

⁹² *Supra* note 53.

⁹³ See MRHA, s. 12(1):

Restraining orders to be confirmed by President

12. —(1) Every order made under section 8 or 9 shall cease to have effect unless it is confirmed by the President within 30 days from the date the Council’s recommendations are received by the President [...]

Even then, the change was only introduced consequent to concerns raised during the Second Reading: Sing., *Parliamentary Debates*, vol. 56, col. 596 (9 November 1990) (Professor S. Jayakumar). First, the concern was that “on such a potentially delicate and sensitive matter as religion, it should not appear that a single Minister has absolute or excessive powers, especially since the Bill also provided that the merits of the decision would not be reviewable in the Courts”. Second, concerns were raised that “a difficult situation may arise when a Minister may have to act on a complaint by a religious group to which he himself belonged”, where “some may believe that there was a likelihood of bias”: Sing., *Parliamentary Debates*, vol. 56, col. 595-96 (11 November 1990) (Professor S. Jayakumar). To address this problem, the Bill was amended so that subsequently, under section 12 of the MRHA, the restraining order ceases to be valid if the President does not confirm the order within 30 days of receiving the Council’s recommendations.

⁹⁴ See MRHA, s. 12(3):

12. —(3) The President shall, in the exercise of his functions under this section, act on the advice of the Cabinet except where the Constitution provides that he may act in his discretion when the advice of the Cabinet is contrary to the Council’s recommendations.

⁹⁵ Neither body functions as an independent check on possible Ministerial abuse. The Cabinet, on disagreeing with the Council’s recommendations, becomes dependent on the President’s discretion. Similarly, the President cannot give voice to disagreement without prior fallout between the Cabinet and the Council. Thus, the function of the President “is insufficient as a political check over undue incursion of religious liberties”: Thio Li-ann, “The Elected President and the Legal Control of Government” in

When the Constitution protects the freedom of religion except where it becomes a threat to public security, order and morality,⁹⁶ it should be imperative that what constitutes the threat to public security or order that the Act seeks to prevent should be carefully defined. The Minister's powers are justified by the rationale that the Act "puts public security and religious harmony above individual interests", specifically "the interests of the individual who is threatening to cause disharmony".⁹⁷ Yet, specific, more objective, clauses detailing the offences and public threats which the MRHA has been designed to arrest had not been incorporated.

Against allegations that "there could be a fair amount of subjectivity in the decision to place a person under a [restraining order]",⁹⁸ it was explained in Parliament that the Minister does not generally act alone, in isolation from the Cabinet.⁹⁹ Furthermore, the Minister has the weight of his Ministry's resources behind him and it was cited

Kevin Tan and Lam Peng Er, eds., *Managing Political Change: The Elected Presidency* (New York : Routledge, 1997) at 130. It was envisioned as being a body of between 6 to 15 members: MRHA, s. 3(1). It is intended to have "considerable moral authority" (see Sing., *Parliamentary Debates*, vol. 54, col. 1054 (22 February 1990) (Professor S. Jayakumar)) on the basis of its multi-religious character. The first Presidential Council for Religious Harmony was a nine-man council including six representatives of major religions in Singapore and two Singaporeans who had distinguished themselves in social and community work. The former Chief Justice Wee Chong Jin was appointed head of the council. The religious representatives were appointed for three years, and the others for two: "First religious harmony body appointed" *The Straits Times [of Singapore]* (2 August 1992). Under s. 4 of the MRHA, its functions are to consider and make recommendations on orders referred to the council by the Minister under s. 11 of the Act, and more broadly "to consider and report to the Minister on matters affecting the maintenance of religious harmony in Singapore which are referred to the Council by the Minister or by Parliament". Two defining characteristics of the Council are that, first, under s. 7 of the MRHA, the proceedings of the Council are secret save for the requirement that its recommendations be published in the *Gazette*. Second, the Council merely recommends but has no binding authority, and cannot consider any matter except that referred to it by the Minister or Parliament: MRHA, s. 4(1).

⁹⁶ *Constitution of the Republic of Singapore* (1999 Rev. Ed. Sing.), art. 15:

Freedom of religion

15. —(1) Every person has the right to profess and practise his religion and to propagate it.
- (2) No person shall be compelled to pay any tax the proceeds of which are specially allocated in whole or in part for the purposes of a religion other than his own.
- (3) Every religious group has the right—
 - (a) to manage its own religious affairs;
 - (b) to establish and maintain institutions for religious or charitable purposes; and
 - (c) to acquire and own property and hold and administer it in accordance with law.
- (4) This Article does not authorise any act contrary to any general law relating to public order, public health or morality.

⁹⁷ Sing., *Parliamentary Debates*, vol. 56, col. 610 (9 November 1990) (Encik Wan Hussin bin Haji Zohhri).

⁹⁸ Sing., *Parliamentary Debates*, vol. 54, col. 1058 (22 February 1990) (Mr. Chandra).

⁹⁹ Also, allegedly:

[U]nder our system, no Minister, whether the Minister for Home Affairs or any other Ministers, with this kind of discretionary powers really acts on his own impulse, on his own personal bias or animosity. He does not act without inputs from officials and the Minister does not act on his own because how is he in a position to know what is happening on the ground, whether on an ISA security matter or on the matters within the purview of this legislation? He has to rely on professional inputs and advice from the police or the ISD. The Minister will have to obtain the facts and evidence before he can even contemplate the making of an order. There have to be a report and recommendations put up to him. Then he has to send the facts and the supporting documents to the Presidential Council, as provided for in the Bill. In other words, if there is no basis whatsoever, the Presidential Council is bound to express their unhappiness and disagreement.

See Sing., *Parliamentary Debates*, vol. 54, col. 1206 (23 February 1990) (Professor S. Jayakumar).

as having to be “very wise and brave”¹⁰⁰ to go against the recommendations of the Council, or indeed against rational decision. However, none of these answer the allegation that the Minister’s powers under the Act are essentially undemocratic in nature.

In excluding judicial review, and opting instead for a Presidential Council for Religious Harmony, coupled with the circumscribed condition of a presidential check if the Cabinet and Council disagree, the MRHA has made the government’s enforcement of religious harmony almost seamlessly invisible in the public sphere. The lack of transparency and secrecy of the Council proceedings simply do not yield any knowledge of whether the Council has carried out its role, or performed its functions in any satisfactory manner.

VII. EDUCATIVE INFORMAL SUPPLEMENTS & THE BENIGN APPEARANCE

A third justification for the enactment of the MRHA raised in the parliamentary debates was that the MRHA was to provide guidelines for harmonious religious relations.¹⁰¹ The official rationale was:

[A] set of ground rules governing what can and cannot be done by religious and political leaders and which are understood and hopefully agreed by all are necessary. These grounds rules must be in the form of an effective and comprehensive piece of legislation which will enable the Government to take appropriate and prompt action against offenders.¹⁰²

Certain informal, extra-legal guidelines, serving as supplements to the MRHA were produced. One such example is the Declaration of Racial Harmony.¹⁰³ It is a product of the consultative exercise that brought together national bodies of all religious groups in Singapore. It echoes the MRHA in pledging to always “recognize the secular nature of our State”, and “promote cohesion within our society”, to “thereby ensure that religion will not be abused to create conflict and disharmony in Singapore”.¹⁰⁴ After the Declaration of Racial Harmony, a network of consultative forums

¹⁰⁰ Sing., *Parliamentary Debates*, vol. 54, col. 1070 (22 February 1990) (Dr. Arthur Beng Kian Lam).

¹⁰¹ Sing., *Parliamentary Debates*, vol. 54, col. 1094 (22 February 1990) (Mr. Goh Choon Kang) and col. 1127 (Dr. John Chen Seow Phun).

¹⁰² Sing., *Parliamentary Debates*, vol. 54, col. 1127 (22 February 1990) (Dr. John Chen Seow Phun).

¹⁰³ The Declaration of Religious Harmony was mooted by the then Prime Minister Goh Chok Tong in October 2002 and adopted in 2003. It, in the style of the National Pledge, reads:

We, the people in Singapore, declare that religious harmony is vital for peace, progress and prosperity in our multi-racial and multi-religious Nation.

We resolve to strengthen religious harmony through mutual tolerance, confidence, respect, and understanding.

We shall always

Recognise the secular nature of our State,
Promote cohesion within our society,
Respect each other’s freedom of religion,
Grow our common space while respecting our diversity,
Foster inter-religious communications,

and thereby ensure that religion will not be abused to create conflict and disharmony in Singapore.

¹⁰⁴ The Declaration was adopted after a consultation process with the various national bodies of all major religious groups in Singapore. It was said it “serves as a basis for Singaporeans to regularly reflect on the state of religious harmony from time to time, and the steps we can take to deepen

was set up “to guide efforts to promote the spirit of the Declaration”. Thus, the Inter-Religious Harmony Circle (IRHC) was formed, comprising representatives from the national bodies of various religious groups.¹⁰⁵ There are similar schemes such as the Inter-Racial Confidence Circles (IRCCs),¹⁰⁶ the National Steering Committee on Racial and Religious Harmony¹⁰⁷ and the Inter-Religious Organization (IRO).¹⁰⁸

These numerous organisations and activities adopted to foster inter-faith dialogue and understanding seem to play a significant role in projecting a benign appearance to the executive. These numerous organisations play ultimately an educative role, facilitating political communication and consultation, helping the executive to achieve political co-optation.

These essentially educative efforts must be placed in the context. Should they fail to achieve to prevent the mischief as stated above from arising, the MRHA is the legal instrument for enforcement, to police and enforce religious harmony in Singapore.

VIII. PART OF THE CALIBRATED AND GRADUATED RESPONSE WITH ABSOLUTE EXECUTIVE DISCRETION

With the amendment¹⁰⁹ of section 298A to the *Penal Code*,¹¹⁰ the rationales provided for the MRHA can once again be explored. Although section 298A was cited as

our ties and understanding with other communities”: Declaration on Religious Harmony, online: <<http://www.mcys.gov.sg/MCDSFiles/Press/Articles/press-release-9Jun-final.html>>.

¹⁰⁵ The Ministry of Community Development and Sports described it as “a Harmony Circle that propagates the Declaration to the community in appropriate ways”: *Ibid*. The IRHC organises activities on Racial Harmony Day, 21 July, to promote inter-faith understanding, and indeed smaller Harmony Circles have been formed by institutions such as New Town Secondary School to further the goal of bringing different racial and religious groups together, to enhance inter-racial and inter-religious understanding. Just like the Declaration of Religious Harmony, the IRHC works through consultation, and has no powers of legal enforcement.

¹⁰⁶ Initiated in 2002, it was said: “They provide a regular platform for various key community leaders to interact in order to build confidence, understanding and trust.”: Mr. Zainal Abidin Rasheed, Senior Minister of State for Foreign Affairs and Mayor of the North East Community Development Council of Singapore (Speech at the Fourth Summit Conference of the Mayors of the World, 13 April 2007) at para. 9.

¹⁰⁷ Established under the Community Engagement Programme (CEP). The CEP builds on the existing strong base of goodwill and level of interaction within the community, and brings community leaders together to discuss social cohesion issues. The National Steering Committee is to guide the IRCCs which will focus on activities at the local level where most people-to-people interaction takes place: See *ibid* at para. 10.

¹⁰⁸ Founded in 1949, the IRO has been commended by Mr. Wong Kan Seng, the current Deputy Prime Minister and Minister for Home Affairs, for being “at the forefront of promoting interfaith relations in Singapore”: Mr. Wong Kan Seng, Deputy Prime Minister and Minister for Home Affairs (Speech at “The World Religions and the Search for Peaceful Co-Existence” Forum at University Cultural Centre, National University of Singapore, 2 January 2007) at para. 12. According to him, “the IRO has helped promote religious peace and harmony in Singapore in times of tension and crisis, like the Sept. 11 attacks. Singaporeans take the lead from the solidarity of IRO-organised events and activities”. The IRO is a founding member of the IRHC. Representatives of the IRO have made representations to Parliamentary Select Committees on issues that religious teachings throw light on. Also, from time to time, the IRO is called upon by government ministries to conduct briefings for visiting foreign dignitaries and delegations on the state of inter-religious harmony in Singapore.

¹⁰⁹ Amended by *Penal Code (Amendment) Act 2007* (No. 51 of 2007).

¹¹⁰ “Consultation Paper on the Proposed Penal Code Amendments”, online: <http://www.agc.gov.sg/publications/docs/Penal_Code_Amendment_Bill_Consultation_Paper.pdf>.

“[a]rising from the case of the racist bloggers who were charged under the Sedition Act”,¹¹¹ it contains words rather similar to that of the MRHA.

In the Penal Code Amendment Bill Consultation paper, section 298A was described as “another option to the Sedition Act, to charge such offender in future cases”, so that “[f]or future cases, where appropriate, prosecution can have the option to proceed under the Penal Code or the Sedition Act”.¹¹² Exactly what factors that “option” depends on, and when it would be “appropriate” to employ section 298A instead of the *Sedition Act*, are not elucidated.¹¹³

Given the situation of the already massive arsenal of legislation to deal with situations of religious tensions, the necessity for section 298A of the *Penal Code* should be analysed through distinguishing it from its predecessor legislation, such as the *Sedition Act* and the MRHA.

In “Race & Religion on the Net: Dangers of Using Legislation as a Curb”, allowances are made for the option between the *Penal Code* and the *Sedition Act* since the latter “carries a high signature”.¹¹⁴ If this should be so, it remains critical that the distinction between the use of the *Penal Code* and the *Sedition Act* should be clarified to avoid confusion. This is especially where “the offence appears to be one of strict liability where the intention of the offender is immaterial. Unlike the Sedition Act, there is no qualifying proviso which decriminalises certain *bona fide* acts”.¹¹⁵ In addition, the phrase “prejudicial to the maintenance of harmony” that was deleted from the MRHA has now found its way back into the legislation.

The result is that wording of similarly wide latitude found in the MRHA is now brought into the *Penal Code*. It produces the serious prospect of a very broad and indeterminate scope of religious activity falling under the vague terms, and facing criminalisation. The preventive element in the MRHA has crossed over to the punitive. This has naturally attracted concerns from religious bodies.¹¹⁶

The whole corpus of very powerful legislative weapons in the hands of the executive for dealing with religious tensions now presents a picture of graduated responses, with sliding scale of severity in official response and executive treatment. And yet,

¹¹¹ *Ibid* at para. 9.

¹¹² *Ibid*.

¹¹³ It is noted:

[T]he proposed Section 298A(b), which appears to be a ‘catch-all’ provision, is disturbingly wide and vague. Without any clearer explanation, it would be difficult for the public to determine what constitutes acts which are prejudicial to the maintenance of harmony between religious or racial groups

Cyril Chua, “Race & Religion on the Net: Dangers of Using Legislation as a Curb” at 11, online: <http://www.ips.org.sg/events/all/Symposium_Digital_Speech_060307/papers/Freedom%20of%20Digital%20Speech_Cyril%20Chua_First%20Draft.pdf>.

¹¹⁴ Cyril Chua, *ibid*.

¹¹⁵ *Ibid*.

¹¹⁶ The National Council of Churches noted the similarity between the MRHA and s. 298A, and expressed its concern:

...the present statutory changes envisaged to the [*Penal Code*] elevate the commission of such acts to a criminal offence. The danger with this is the possible subjectivity and arbitrariness of the judgment which may be made about which acts transgress the boundaries and which do not. The uncertainty is unsatisfactory.

“Penal Code: Proposed Changes ‘relevant and compassionate’”, online: <<http://www.methodistmess age.com/mar2007/penalcode.html>>.

there is no satisfactory differentiation in the wording of the various offences under the *Sedition Act*, the MRHA and section 298A of the *Penal Code*.

The executive or the Public Prosecutor arrogates to itself which response would be appropriate, based on its absolute discretion. That is another distinguishing feature of the MRHA—that it is a part of an extensive corpus of very powerful legislative weapons, the choice of specific response to the situation on the ground is one to be exclusively determined by the executive. This exposes the potential arbitrariness of its employment.

IX. CONCLUSION

The regime of managing, policing and enforcing religious harmony in Singapore is backed up by an extensive legalistic arsenal, one of the most important of which counts the MRHA.

Until the vagueness of the wording of the MRHA, especially section 8 of the MRHA, is clarified,¹¹⁷ the Minister is given the power to rely on his subjective apprehension of what threatens racial harmony. The total exclusion of judicial review makes the President's circumscribed veto conditional on a disagreement between the Cabinet and the Presidential Council for Religious Harmony. The terms of the legislation are too broad to be of use as a guideline to the citizens. The latitude of the MRHA depends on the Minister's subjective perception of what is politically acceptable. All these point to the real potential for the abuse of the MRHA.

In Singapore, where political ground-rules are informally drawn but closely monitored, sensitive issues are expected to be politely discussed. The MRHA reflects the government's stand that it is exclusively within the province of the executive to determine political ground-rules on the place of religion in politics. The executive arrogates to itself the unchallenged role of a neutral, secular arbiter in policing and enforcing religious harmony in Singapore.¹¹⁸ It underscores the thinking behind

¹¹⁷ Encik Wan Hussin bin Haji of Aljunied GRC had proposed that despite his "confidence in [the Minister's] integrity, honesty and sense of justice", nevertheless

to allay the fears of the public about the powers in his hands, the Minister should ... give further, hypothetical examples, besides those instances already cited in the White Paper, to show the kind of situations that tend to lead to religious friction.

Sing., *Parliamentary Debates*, vol. 54, col. 1122 (22 February 1990) (Encik Wan Hussin bin Haji Zohri). If the Government is willing to assure religions that resisting the state of approval of gambling casinos, easier divorce law, compulsory cremation or a law requiring Sunday work are not to be construed as mixing politics and religion, those examples could be included as illustrations under the MRHA and accompanied by explanatory notes as to why they do not offend the MRHA: Anna Teo, "Concern accompanies general accord" *Business Times [of Singapore]* (21 September 1990). Also, the Minister could have been made obliged to take into account factors such as the background of the person concerned, "to examine whether his/her speeches reflect a negative trend or line... as well as conduct when making the speeches", and also "the kind of audience he/she is speaking to, and the place where it is made, whether it is a mosque, a public rally or an academic forum": Sing., *Parliamentary Debates*, vol. 54, col. 1122 (22 February 1990) (Encik Wan Hussin bin Haji Zohri). Neither option raised in Parliament was adopted in the final product of the MRHA.

¹¹⁸ Such thinking can perhaps be gleaned from a speech on the MRHA made in 2004 by Mr. Zainul Abdin Rasheed, Minister of State for Foreign Affairs:

... it is not only this single piece of legislation that safeguards ethnic harmony in Singapore. What Singapore has learnt is that we must have a "consciousness" of racial and religious harmony in all the laws that govern public behavior. To convince Singaporeans that the Government is serious about

Singapore-style state paternalism. In essence, it reflects the political leadership's deep-seated distrust of the electorate and opposition. It also reflects its paternalistic instinct to restructure voting behaviour and party politics to its vision. It reflects an ideological rationale that eschews political contestation, in favour of harmony and consensus.

maintaining racial harmony, all pieces of legislation need to be consistent. Our legislation is thus "permeated" with the key principle that no ethnic or religious community in Singapore should be allowed to infringe on the rights of other communities.

Mr. Zainul Abidin Rasheed, Minister of State for Foreign Affairs (Speech at the 12th Conference of the East and Southeast Asia Network for Better Local Governments 'Security Management in ESEA Cities', Organized by the Konrad Adenauer Foundation, Rendezvous Hotel—Resolving Ethno-Religious Conflicts: The Singapore Experience", 2 December 2004), online: <http://app.mfa.gov.sg/2006/press/view_press.asp?post_id=1153>.