

0752

B E863 AAE

PARLIAMENT-CODIFY

BM

KUALA LUMPUR, DEC 3 (BERNAMA) -- DATUK SERI DR MAHATHIR MOHAMAD SAID TODAY THE GOVERNMENT PROPOSES TO CODIFY THE POWERS AND FUNCTIONS OF THE LEGISLATURE, EXECUTIVE AND THE JUDICIARY TO ENSURE PROPER PERFORMANCE OF THEIR CHECK AND BALANCE ROLE.

THE PRIME MINISTER SAID THAT IN A DEMOCRACY, THE THREE BRANCHES IN THE GOVERNMENT OPERATED UNDER A SEPARATION OF POWERS CONCEPT WHERE THEY WERE SUPPOSED TO WORK IN A CHECK AND BALANCE SITUATION TO ENSURE NO BRANCH OVERSTEPPED ITS AUTHORITY AND USURPED THE FUNCTIONS OF ANOTHER.

TABLING THE PRINTING PRESSES AND PUBLICATIONS (AMENDMENT) BILL IN THE DEWAN RAKYAT, DATUK SERI DR MAHATHIR SAID: +IF THE LEGISLATOR IS ALSO THE IMPLEMENTOR AS WELL AS THE JUDGE OF THE LAWS, THEN THE CHECK AND BALANCE SYSTEM WILL NOT OPERATE.+

+THIS HAS ALREADY HAPPENED IN MALAYSIA,+ HE ADDED. -- MORE
2041MST 03 12 07

0759

B E864 AAE

PARLIAMENT-CODIFY 2 KUALA LUMPUR

DATUK SERI DR MAHATHIR SAID LAWS ENACTED IN THIS COUNTRY MUST GO THROUGH A PROCESS DETERMINED BY THE SUPREME LAW OF THE LAND -- THE FEDERAL CONSTITUTION.

NO LAW COULD BE MADE ARBITRARILY, ACCORDING TO THE WHIM OF TWO OR THREE PEOPLE, OR THE ELECTED REPRESENTATIVES.

IF LAWS THAT HAD BEEN DRAWN UP AND RATIFIED THROUGH SUCH A TORTUROUS PROCESS WERE TO BE SIMPLY DISMISSED, THEN IT WOULD BE POINTLESS TO HAVE THE DEWAN RAKYAT AND DEWAN NEGARA, HE SAID.

+BUT THERE ARE PEOPLE WHO SAY THE OBJECTIVES OF A LAW PASSED BY THE DEWAN RAKYAT HAVE NOTHING TO DO WITH ITS ENFORCEMENT.+

THEY ALSO CLAIMED THE INTERPRETERS OF THE LAW NEED NEVER TAKE INTO ACCOUNT THE REASONS FOR HAVING THE LAW IN THE FIRST PLACE, HE ADDED.

+THESE LEGAL EXPERTS SAY WHAT IS NECESSARY IS FOR THE INTERPRETERS OF THE LAW TO INTERPRET THE WORDING OF THE LEGISLATION. (THEY SAY) THE LETTER OF THE LAW IS MORE IMPORTANT THAN ITS SPIRIT, EVEN WHEN IT IS OBVIOUS THERE ARE REASONS FOR THE FORMULATION OF THAT PARTICULAR LAW,+ HE ADDED. -- MORE

2054MST 03 12 87

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PARLIAMENT-CODIFY 3 KUALA LUMPUR

DATUK SERI DR MAHATHIR ALSO REFERRED TO THE APPLICATION OF UNWRITTEN LAWS, SUCH AS, THE ENGLISH COMMON LAW, SAYING SUCH LAWS WERE NOT SUITABLE FOR THIS COUNTRY.

HE SAID THAT ACCORDING TO A LAW LECTURER WELL-VERSEO IN MALAYSIAN LAW, PROF R.H. HICKLING, THE ENGLISH COMMON LAW ORIGINATED FROM THE CUSTOMS AND PHILOSOPHIES OF THE ENGLISH AND WAS DIFFERENT FROM THE BASIS OF THE LAWS OF OTHER EUROPEAN COUNTRIES WHERE CIVIL LAW WAS PRACTISEO.

+AS SUCH, IT WILL NOT BE COMPATIBLE WITH THE CUSTOMS AND TRADITIONS OF THE MALAYS OR THE OTHER RACES IN MALAYSIA,+ HE SAID.

HE NOTED THAT IN GAMES OF SPORT MUCH LOVED BY THE ENGLISH, A REFEREE WAS CHOSEN TO SETTLE DISPUTES BETWEEN TWO OPPOSING SIDES AND HIS DECISIONS WERE FINAL.

AT FIRST GLANCE, THIS SEEMED AN IDEAL SOLUTION BUT WHAT WOULD HAPPEN IF THE REFEREE ERRED OR WAS BIASED? HE ASKED. -- MORE
2109MST 03 12 87

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B E866 AAE

PARLIAMENT-CODIFY 4 KUALA LUMPUR

DATUK SERI DR MAHATHIR SAID THE PROBLEM WITH UNWRITTEN LAWS WAS THAT THE ACCUSED COULD NOT KNOW WHAT WAS IN THE MIND OF THE JUDGE. IF THE JUDGE WANTED TO REFER TO PREVIOUS CASES IN BRITAIN OR OTHER COUNTRIES, THE ACCUSED WOULD NOT BE LIKELY TO KNOW WHICH CASE WOULD BE USED AS A SOURCE OF REFERENCE.

THE BASIS GIVEN IN PAST CASES WOULD NOT ALWAYS BE THE SAME AND THE PARTY THAT NEEDED TO ACT, IN PARTICULAR THE GOVERNMENT IN THE DISCHARGE OF ITS FUNCTIONS, WOULD NOT KNOW WHICH BASIS WOULD INFLUENCE THE JUDGE.

+PERHAPS THE BRITISH GOVERNMENT KNOWS, BUT A GOVERNMENT LIKE THE MALAYSIAN GOVERNMENT WOULD NOT KNOW ANYTHING OF THE INTRICACIES OF ENGLISH COMMON LAW. +

ON JUDICIAL REVIEW, DATUK SERI DR MAHATHIR SAID IT GAVE THE INTERPRETERS OF THE LAW UNLIMITED POWERS, TO THE EXTENT OF ENABLING THEM TO NEGATE THE IMPLEMENTATION OR ENFORCEMENT OF ANY LAW. -- MORE
2117MST CI3 12 87

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PARLIAMENT-CODIFY 5 KUALA LUMPUR

NO ONE COULD GUESS THE OUTCOME OF A JUDICIAL REVIEW BY A JUDGE AS THIS WAS ENTIRELY AT HIS DISCRETION.

IF IT WAS DECIDED ANYONE COULD CHALLENGE THE GOVERNMENT, THE GOVERNMENT WOULD NO LONGER BE ABLE TO MAKE A FIRM DECISION, HE SAID.

EACH AND EVERY DECISION COULD BE CHALLENGED AND PROBABLY OVERTURNED. THE GOVERNMENT WOULD THEN NO LONGER BE THE EXECUTIVE. ANOTHER QUARTER HAD TAKEN OVER THIS FUNCTION.

DATUK SERI DR MAHATHIR ALSO TOUCHED ON THE CONCEPT OF NATURAL JUSTICE, SAYING IT OUGHT NOT TO APPLY IN THIS COUNTRY BECAUSE IT WAS NO LONGER NATURAL FOR U.S. +

HE SAID WHAT WAS JUST IN BRITAIN MIGHT NOT BE SO IN MALAYSIA. AT ONE TIME IN BRITAIN'S PAST, A GOAT THIEF COULD BE SENTENCED TO HANG BUT NOW NOT EVEN A MURDERER COULD BE SENTENCED TO DEATH, HE SAID.

+IF WE THINK ABOUT IT LOGICALLY, WHAT IS TRUE NATURAL JUSTICE IS AN EYE FOR AN EYE, A TOOTH FOR A TOOTH, + HE ADDED. -- MORE
2135MST 03 12 87

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B E1374 AAE

PARLIAMENT-CODIFY 6 KUALA LUMPUR

DATUK SERI DR MAHATHIR ALSO QUOTED A BRITISH WRITER, J.A. GRIFFITH FROM THE LONDON SCHOOL OF ECONOMICS, AS SAYING: +EVERY PRACTISING BARRISTER KNOWS BEFORE WHICH JUDGES HE WOULD PREFER NOT TO APPEAR IN A POLITICAL CASE BECAUSE HE BELIEVES... THAT CERTAIN JUDGES ARE MUCH MORE LIKELY THAN OTHERS TO BE BIASED AGAINST A CERTAIN GROUP... +

HE SAID THIS SHOWED A JUDGE'S DECISION MIGHT NOT BE BASED ON THE ISSUES BEFORE HIM BUT INFLUENCED BY HIS OWN PERSONAL CHARACTER AND MAKE-UP.

DATUK SERI DR MAHATHIR SAID WHEN UNWRITTEN LAWS WERE APPLIED, THE JUDGE WAS IN FACT MAKING HIS OWN LAWS AND WOULD SURELY BE BIASED IN FAVOUR OF THESE. -- BERNAMA
2142MST 03 12 87