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B E101 AAE  
PARLIAMENT-MAHATHIR R R R R  
BM

KUALA LUMPUR, MARCH 17 (BERNAMA) -- THE FEDERAL CONSTITUTION IS BEING AMENDED TO MAKE CLEARER THE POSITION OF THE COURTS, ESPECIALLY THE DIVISION BETWEEN THE JUDICIARY AND EXECUTIVE OR LEGISLATURE, DATUK SERI DR MAHATHIR MOHAMAD SAID TODAY.

THE AMENDMENT WAS IMPORTANT TO ENSURE THE EXECUTIVE, LEGISLATURE AND JUDICIARY COULD DISCHARGE THEIR RESPONSIBILITIES WITHOUT INTERFERING WITH OTHERS OR SUFFERING INTERFERENCE BY OTHERS, THE PRIME MINISTER SAID WHEN TABLING THE CONSTITUTION (AMENDMENT) BILL FOR SECOND READING IN THE DEWAN RAKYAT.

IN HIS SPEECH, WHICH TOOK ABOUT AN HOUR, HE SAID THERE HAD LATELY BEEN INDICATIONS THAT MATTERS THOUGHT TO BE THE PREROGATIVE OF THE EXECUTIVE WERE CONSIDERED ENCROACHABLE BY THE JUDICIARY.

+IF THE PREROGATIVE OF ONE SECTOR CAN BE INTERFERED WITH BY OTHERS, THE ADMINISTRATION OF THE COUNTRY WILL BE THREATENED AND BECOME WEAK, AND A WEAK ADMINISTRATION CANNOT ENSURE STABILITY AND PROGRESS IN ANY COUNTRY,+ HE SAID

THE CONSTITUTION THEREFORE HAD TO BE AMENDED BECAUSE THE NATION, MALAYSIANS AND AS WELL AS THE GOVERNMENT, HAD THE RIGHT TO KNOW IN CLEAR TERMS WHAT WAS WRONG AND WHAT WAS NOT WRONG IN THE EYES OF THE LAWS OF THE COUNTRY. -- MORE/

1749MST 17 03 88

0305

B E110 AAE  
PARLIAMENT-MAHATHIR 2 KUALA LUMPUR R R R R

THE PRIME MINISTER SAID IT WOULD BE DIFFICULT FOR ANYONE TO EMBARK ON ANY ACTION IF HE DID NOT KNOW WHETHER OR NOT IT WOULD BE WRONG BECAUSE WRITTEN LAWS COULD BE SET ASIDE.

+HE MIGHT HAVE ACTED THUS BECAUSE HE THOUGHT IT DOES NOT CONTRAVENE ANY LAW, AND ISN'T IT UNFORTUNATE FOR HIM IF SUDDENLY HE IS PROSECUTED AND THE COURT DECIDES ON HIS CASE ACCORDING TO ITS OWN DISCRETION WITHOUT TAKING INTO CONSIDERATION EXISTING LAWS.+

HE SAID COURTS COULD MAKE DECISIONS BY MAKING COMPARISONS WITH CASES IN OTHER COUNTRIES WHICH WERE NOT KNOWN TO THE GENERAL PUBLIC, IN FACT AT TIMES NOT EVEN KNOWN TO COUNSEL WHO MIGHT HAVE ADVISED THE PERSON BEING PROSECUTED

+THIS IS WHY IT IS NORMAL IN ANY COURT TO ARRIVE AT DIFFERING DECISIONS ON TWO CASES HAVING THE SAME BACKGROUND,+ DATUK SERI DR MAHATHIR ADDED.

+THAT IS ALSO WHY CASES WHICH HAVE NEVER BEEN QUESTIONED BY THE COURTS BEFORE BECAUSE THEY ADHERED TO THE PROVISIONS OF THE LAWS, ARE NOW SUDDENLY BEING QUESTIONED AND FOUND TO BE IN THE WRONG BASED ON THE NATURAL JUSTICE CONCEPT OR JUDICIAL REVIEW WHICH IS NOT WRITTEN,+ HE SAID. -- MORE

1818MST 17 03 88

D331

B E126 AAE  
PARLIAMENT-MAHATHIR 3 KUALA LUMPUR R R R R

DATUK SERI DR MAHATHIR SAID THE AMENDMENT IN QUESTION WAS TO ARTICLE 121 WHICH VESTS THE JUDICIAL POWER OF THE FEDERATION IN THE HIGH COURTS AND THE INFERIOR COURTS, AND VESTS IN THE SUPREME COURT CERTAIN JURISDICTIONS.

THE BILL SEEKS TO DELETE THE VESTING PROVISIONS IN ARTICLE 121 AND TO PROVIDE IN CLAUSE (1) OF THAT ARTICLE THAT THE JURISDICTION AND POWERS OF THE HIGH COURTS AND SUBORDINATE COURTS ARE AS MAY BE CONFERRED BY OR UNDER FEDERAL LAW.

WITH THIS, THE PRIME MINISTER SAID, THE ARTICLE WOULD NO LONGER EMPHASISE THE VESTING OF THE JUDICIAL POWER OF THE FEDERATION ON THE COURTS BUT ONLY SET OUT THE TYPE OF COURTS AND THEIR JURISDICTION AS WELL AS THEIR POWERS.

HE SAID THAT AT PRESENT, THE DIVISION BETWEEN THE JUDICIARY AND EXECUTIVE OR LEGISLATURE WAS VAGUE, DUE TO THE EXISTENCE OF PROVISIONS RELATING TO VESTING OF JUDICIAL POWER OF THE FEDERATION.

DATUK SERI DR MAHATHIR SAID THE FREE RESORTING TO THE BRITISH COMMON LAW WITHOUT TAKING INTO CONSIDERATION THE DIFFERENCES IN THE CULTURES AND CUSTOMS BETWEEN BRITAIN AND MALAYSIA, THE USE OF THE UNWRITTEN RIGHTS OF THE COURTS AND OTHER THINGS HAD MADE WRITTEN LAWS NO LONGER USEFUL AND THE PUBLIC AND THE GOVERNMENT COULD NO LONGER BE GUIDED BY THE LAWS WHEN DECIDING ON A COURSE OF ACTION. --  
MORE

1908MST 17 03 88

B E135 AAE  
PARLIAMENT-MAHATHIR 4 KUALA LUMPUR R R R R

DATUK SERI DR MAHATHIR EXPLAINED THAT IN BRITAIN, PARLIAMENT WAS SUPREME, THE CONSTITUTION WAS UNWRITTEN AND SUBORDINATE TO PARLIAMENT, AND PARLIAMENT MADE THE FINAL DECISION ON ANY MATTER.

OTHER QUARTERS HAD TO ACCEPT THE DECISION OF PARLIAMENT AND COULD NOT MAKE INTERPRETATIONS THAT DIFFERED FROM THE WILL OF PARLIAMENT.

IN MALAYSIA ON THE OTHER HAND, THE WRITTEN CONSTITUTION IS ACCEPTED AS A SOURCE OF LAW AND AS SUPREME, BUT INTERPRETATION OF ALL LAWS AND THE CONSTITUTION IS LEFT TO THE COURTS WITHOUT ANY LIMITATION, ACCORDING TO HIM.

+THIS MEANS THAT IN ACTUAL FACT, THE WRITTEN CONSTITUTION IS SUBJECT TO THE DISCRETION OF THE JUDICIARY WHICH SOMETIMES CHANGES AND DIFFERS FROM ONE JUDGE TO ANOTHER AND THIS HAS OCCURRED IN CASES INVOLVING THE PREROGATIVE OF THE GOVERNMENT AND THE RIGHTS OF THE MINISTER CONCERNED IN THE QUESTION OF SECURITY,+ HE SAID.

HE SAID WITH THE POWER TO INTERPRET, THE COURTS COULD AND HAD MADE INTERPRETATIONS THAT HAD DEVIATED FAR FROM THE INTENT AND SPIRIT OF THE FORMULATION OF A PARTICULAR LAW. -- MORE

1945MST 17 03 88

B E140 AAE  
PARLIAMENT-MAHATHIR 5 KUALA LUMPUR R R R R

DATUK SERI DR MAHATHIR SAID THE COURTS HAD DECIDED THAT IN ENFORCING THE LAWS, THEY WERE NOT BOUND BY THE OBJECTIVE AND PURPOSE OF PARLIAMENT IN FORMULATING THESE LAWS.

THEY MADE THEIR OWN POLICIES THAT THEY WERE BOUND BY ONLY THEIR OWN INTERPRETATIONS OF THE LAWS AND THEIR PHRASING, HE SAID.

+THERE HAVE BEEN CASES WHERE ALTHOUGH THE LAWS ARE VERY CLEAR TO THE EXTENT THAT NO ONE CAN MISUNDERSTAND THEM, COURTS STILL COME OUT WITH DIFFERENT INTERPRETATIONS OR TOTALLY DISREGARD THESE LAWS,+ HE ADDED.

THERE WERE ALSO COURTS BYPASSING WRITTEN LAWS DUE TO GIVING GREATER PRIORITY TO DECISIONS OF CASES IN BRITAIN AND OTHER COUNTRIES, THE PRIME MINISTER SAID.

+MALAYSIA IS NOT BRITAIN. THE CULTURE AND THE CIVILISATION OF BRITAIN ARE CLEARLY DIFFERENT FROM THE CULTURE AND THE CIVILISATION OF THE MULTI-RACIAL AND MULTI-RELIGIOUS PEOPLE OF MALAYSIA,+ HE SAID. -- MORE

2018MST 17 03 88

D384

B E145 AAE  
PARLIAMENT-MAHATHIR 6 KUALA LUMPUR R R R R

THE PRIME MINISTER SAID: +IN ACCEPTING DEMOCRACY, WE NEED NOT ACCEPT ALL THAT ARE CONSIDERED DEMOCRATIC BY WESTERNERS.+

HE SAID IN A DEMOCRATIC COUNTRY, THE PEOPLE WERE THE POWER AND AN INDIVIDUAL, WHATEVER HIS POSITION, HAD NO RIGHT TO SET ASIDE THE WISHES OF THE PEOPLE WHILE AN ELITE GROUP HAD NO RIGHT TO THWART THE WILL OF THE MAJORITY JUST BECAUSE IT THOUGHT IT WAS WISER THAN THE PEOPLE.

THAT WAS WHY LAWS MADE BY ELECTED REPRESENTATIVES OF THE PEOPLE SHOULD BE RESPECTED AND ANYONE DISREGARDING LAWS MADE BY A GOVERNMENT ELECTED BY THE PEOPLE WAS VIOLATING DEMOCRACY, HE SAID.

HOWEVER, THE MALAYSIAN DEMOCRATIC SYSTEM GAVE THE JUDICIARY AND THE CIVIL SERVICE, WHICH ARE PERMANENT, THE RIGHT TO CRITICISE THE ELECTED REPRESENTATIVES, THAT IS, THE GOVERNMENT, BUT THIS POWER TO CRITICISE AND CONTROL THE GOVERNMENT SHOULD NOT CONSTITUTE DENIAL OF THE RIGHTS OF THE PEOPLE AND THEIR REPRESENTATIVES.

+IF ELECTED REPRESENTATIVES AND THE GOVERNMENT DEVIATE, THEY CAN BE PROSECUTED. HISTORY HAS SHOWN THE GOVERNMENT ADHERES TO THE DECISION OF THE COURTS AND THERE ARE PEOPLE WHO HAVE BEEN DISMISSED FROM THE CABINET BECAUSE THEY BREACHED THE LAWS, BUT THE COURTS TOO SHOULD ADHERE TO THE LAWS,+ HE SAID. -- BERNAMA

2041MST 17 03 88