

Why changes are needed

NST 18 MAR 1988

By KALIMULLAH HASSAN

KUALA LUMPUR, Thurs. — The Prime Minister said today the jurisdiction of the Legislature, Executive and Judiciary must be clearly defined for the Government to be strong, stable and efficient.

A clearer definition of the areas of responsibility of the three branches of the Government was, therefore, necessary to prevent one from interfering with the others or suffer interference from others, he said.

Datuk Seri Dr. Mahathir Mohamad said this when explaining the amendment to Article 121 of the Federal Constitution when he tabled the Constitution Amendment Bill for the second reading at the Dewan Rakyat.

"This amendment, however, will not affect the independence of the Judiciary, and neither is the Judiciary required to side with the Government," he said.

Other amendments proposed in the Bill were related to:

- federal jurisdiction over land;
- detention of non-citizens for offences triable under civil or Syariah law;
- disqualification of both the chairman and deputy chairman of a public service commission from holding office in or being involved in commercial undertakings;
- empowering the Attorney-General to determine in which courts to institute or transfer proceedings; and,

● the Ninth Schedule, pertaining to housing and improvement trusts; ancient and historical monuments and culture and sports.

Dr Mahathir said in Article 121 the separation of powers between the three branches of the Government was vague and thus the need to amend it.

He said lately the Judiciary had seen fit to touch on matters which were previously regarded as solely within the Executive's jurisdiction.

"If one party meddles in the duties of another, then the country's administration will be threatened and become weak.

Matters of security

"A weak administration will in turn threaten stability and prosperity of a country," the Prime Minister said.

Dr Mahathir said at present, laws passed by Parliament were open to interpretation by judges. In some cases, precedents from other countries, often unheard of by defence lawyers, were cited when delivering judgments.

He said different judges also had different interpretations.

This, he said, was evident from judgments delivered in cases involving the Government's and Minister's rights in matters of security.

"With these powers of interpretation, courts have often made judgments which are vastly different from the reasons for and spirit in which these laws were formulated.

"The courts have decided that in enforcing the law they are bound by their interpretations and not by the reasons

QUOTE

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for which Parliament formulated these laws."

Dr Mahathir said because of this, all clarifications and debates in Parliament when formulating laws had become meaningless.

He said that some judges had even totally ignored the written law.

"Even when the laws are so clear to ensure no one is confused, there are courts which make different interpretations and ignore the law totally."

Dr Mahathir said some courts placed more importance on precedents in Britain.

"I want to stress that Malaysia is not Britain. The culture and civilisation of Britain and other Western countries vastly differ from that of Malaysia's multi-racial, multi-religious society."

He cited cases where unmarried couples had stayed together and then sued one another for palimony, saying such practices were totally alien to Malaysian culture.

"Are their interpretations and logic so correct that we ignore our laws which were formulated through lengthy, in-depth debate? Is their 'natural justice' more important than our laws?" he asked.

Dr Mahathir said the Western world's concept of natural justice often witnessed mass murderers being sentenced to life imprisonment and being released for good behaviour only to kill again.

"Is this natural justice? What is so natural about sympathising with killers and not with those killed?"

He said Malaysia accepted democracy, but not everything that the West deemed democratic was so.

"In our democracy, the people hold power. If the people want to prevent the Government from passing certain laws, they will vote in such a way that no political party has a clear majority.

"The people decide whether a party should be placed in a position to amend the Constitution. No individual or elitist group has the right to set aside the people."

Any party which ignored the

laws made by a Parliament chosen by the people was being undemocratic.

Dr Mahathir said the Judiciary and civil service could tick off MPs and the Government through certain channels, but this did not mean they could suppress the people and their representatives.

"History shows that we abide by the court's decision. There are Ministers who have been sacked because they went against the law. But the courts, too, have to abide by the law."

He said to achieve a balance, the country needed a civil service and Judiciary which did not involve itself in politics.

"But unfortunately, lately, we find incidents where some members of the Judiciary are involved in politics.

"By possessing qualities termed as 'fiercely independent', these members are indirectly involved with Opposition politics. And to display that their independence is really 'fierce', they often bend over backwards to award decisions in favour of those challenging the Government."

Infallible

Dr Mahathir said judges should concern themselves with justice and not with siding anyone.

"When a judge feels he has first to prove his independence, then justice takes a back seat. That is why we see some judges, when delivering judgments, making unfounded statements as if they want to vent their frustrations.

"They make such statements because of the belief that judges cannot be ticked off. If they are criticised, then they say it is contempt of court.

"If there is an appeal, then it is sub-judice to make any comments on a case. In other words, judges can say what they want of a person because that person does not have the right to defend himself.

"This was evident when a judge said a Minister acted *mala fide* (in bad faith) when he did not investigate information from one of his officers.

"Every Minister has dozens of officers. A Minister has to trust information given by his officers. If he has to investigate every (bit of) information he gets, what need is there for officers?"

"Judges are not infallible. In the Carrian case in Hong Kong, the judge made a decision which the world found strange.

"One QC described the judge's decision as irrational and bizarre. Is it not possible that even in Malaysia there could be irrational and bizarre judgments made in bad faith?"

"Power must be responsibly used. Just because we have immunity we should not criticise and act in disregard of others."

Dr Mahathir said it was because of this that the Government wanted the Judiciary to abide by the written law and state clearly under which law a judgment was made.

"A judge's discretion should be in line with the law, except in cases where there are no laws pertaining to that particular case."

He said the courts could dispense with the backlog of more than 300,000 cases if they stuck to the written law rather than rely on their interpretations.

He said the backlog had resulted in many people waiting in jail for their cases to be heard.

"If they are guilty, all right. But what if they are later found innocent? Then, they would have been betrayed by the system."

On the amendments which would no longer allow the High Court of Malaya and Borneo to overturn a decision by the Syariah court, he said:

"It is necessary to assert the integrity of the Syariah court because they would have taken account of the *hukum syarak* when making a decision."

He said the Government intended to set up a High Court where people could appeal against a Syariah court decision.

All Barisan Nasional component leaders were present in the House during Dr Mahathir's 40-minute speech.