

12/11/1998

Justice itself is always on trial

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MALAYSIAN justice is on trial. So says the foreign Press. A number of international non-governmental organisations based in Europe and the United States have also joined in the chorus. So have certain local groups and NGOs.

The sudden upsurge of apparent concern with the fairness of our criminal justice system was sparked by the on-going trial of the former Deputy Prime Minister and Finance Minister, Datuk Seri Anwar Ibrahim.

In an era of globalisation in investment and trade, the political leadership of countries it seems has become the business of everybody. This is because it is the political leadership that effectively determines the economic policy of the country.

Sometimes the security issue is raised on the ground that the political leadership of a country is said to be a threat to world peace, as can be seen in the case of Cuba, Iraq, Libya and North Korea.

The bottom line, however, is still the economic agenda of countries who want to dominate the world.

In reality, the extraordinary interest shown in the Anwar trial - both domestically and internationally - arises from the fact that a vacuum to the political succession has been created by the sudden departure of Anwar from the Government. At home for the last five years, Anwar was the acknowledged political successor to Datuk Seri Dr Mahathir Mohamad. Abroad, it seems Anwar was an acceptable replacement judging from the foreign reaction to his arrest and trial.

To the outside world, the political succession is of interest because of our geographical location and membership of Asean. The tendency of the western world, in particular, is to treat events in Malaysia as identical to that of other Asean countries and hence associated with the events that led to the exit of President Marcos of the Philippines and President Suharto of Indonesia.

Just because Dr Mahathir has been in power for more than 17 years and he is now 73 years old does not mean that the political situation here is similar to that of the Philippines or Indonesia. Prime Minister Lee Kuan Yew of Singapore was in power for 30 years.

In the past, we have had no problems with political succession. The Prime Minister of the day was always succeeded by the Deputy Prime Minister. In the current situation, a Deputy Prime Minister has not been named to replace Anwar for the simple reason that party elections are due next year. Dr Mahathir could have easily named one of the two vice-presidents of Umno as the Deputy Prime Minister but he has refrained from doing so obviously because he wants the process to be more democratic by leaving the decision to the party membership.

Incidentally, Tun Hussein Onn, who was the Deputy Prime Minister, succeeded to the prime ministership on the death of Tun Abdul Razak and named Dr Mahathir as his deputy although at the time, Dr Mahathir was the third Umno vice-president thus superseding two others. In part, the manner by which Dr Mahathir initially came to power was the cause of the power struggle within Umno which finally led to the break-up of the party.

The present stalemate is to avoid a repetition of the past so that our political leaders will be seen to have been democratically elected.

It is against such economic and political considerations that we should examine the fairness or otherwise of our criminal justice system.

The Malaysian criminal justice system is basically that of the Common Law which was first introduced by the British in 1786 in Penang and since applied to the entire country.

There have been modifications over the years to suit local conditions, as for example, the abolition of the jury. In every criminal trial, there is a system of one trial and two appeals. In Anwar's case, the trial in the High Court could result in appeal first to the Court of Appeal and thence to the Federal Court.

If there have been any shortcomings during the pre-trial stage, the normal procedure is to question them during the trial itself. This will largely be confined to the investigations conducted by the police before the case reaches the court.

The criminal charges against Anwar are not in themselves unique. What is unique about the case is because Anwar is a politician who has held high public office.

As a politician, he has supporters in the country who are loyal to him and many friends overseas. The political dust created by his dismissal from office and expulsion from Umno should not, however, blind their vision from the fairness of our criminal justice system and the long established independence of the Malaysian judiciary.

The law requires that criminal trials shall be held in open court, which means that members of the public are free to attend such trials. If the existing court room is not able to accommodate the many people who are interested, perhaps arrangements can be made for them to follow the proceedings in an adjoining court room through closed circuit television.

In every trial, justice itself is on trial always - the system, the police, the judge, the prosecutors, the defence counsel and the accused person. There is no reason to doubt that the Anwar trial will be any different.

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