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Serve justice, not prejudices

NO doubt his detractors would pounce on Prime Minister Datuk Seri Dr Mahathir Mohamad's latest pronouncements on the judiciary as an attempt to muzzle the judiciary. But we beg to disagree. What was said needed to be said, not only because of its validity in the light of recent judicial events but also to preserve public confidence in the judiciary and judicial system.

We share Dr Mahathir's views that first, there is no room for biased judges and second, those judges who have their own stand on a particular issue and disagree with certain laws passed by Parliament should disqualify themselves from hearing cases involving such laws. We would add that judges should also disqualify themselves from cases where their children, relatives or close friends appear as counsel for litigants.

The central element of judicial independence is not just the freedom of the judges to hear and decide cases without interference from others, be it the Government, NGOs, pressure groups or foreign media. It also includes the freedom to decide cases uninfluenced by personal taste, prejudice and emotion. The purpose of judicial independence is not to serve and protect judges. Nor is it intended to serve the interests of the two branches of Government, the executive and legislative. It exists to serve and protect the governed, the people.

A want of impartiality is extremely damaging to the effective administration of the justice system. Perverse as it is, there seems to be a tendency by the Opposition and the West to see the judiciary as independent only when the judgments go against the Government.

Thus, we had a situation where the call for the abolition of the Internal Security Act by a judge was proclaimed as an act of judicial heroism. But sadly, what was omitted from the lauds of approval is the fact that there was a glaring breach of judicial duty - as the legal arbiters, judges do not make law but interpret it.

The judges' work involves the application of statute law - the interpretation of which is often not free from doubt - and the exercise of judicial discretion which call not only for fact finding but also for evaluations and assessment of reasonableness standard and community-based standards.

No doubt there are some who see the judge's action as a prelude to judicial activism in this country. But those enamoured by judicial activism should be aware of ongoing debates on it in Canada, England and Australia. There are pitfalls, one being the possibility of such activism leading to judicial tyranny. Clearly, judicial activism, desirable as it is in the application of the common law, should not encroach on the function of the legislative.

Ultimately, judicial independence rests on the calibre and character of the judges themselves.

Judges should avoid associating their office with public controversies and mingling with businessmen and politicians. Nor should they demean their office and character with undesirable conduct.

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