

By SHAD SALEEM FARUQI
sunday@thestar.com.my

SINCE 1988, at innumerable legal forums, the hope had been expressed that the miscarriage of justice in the Tun Salleh Abas, Tan Sri Wan Suleiman Pawan Teh and Datuk George Seah cases will one day be rectified.

Last Thursday night at the Bar Council dinner, there was the sweet demonstration that "God is just; that his justice cannot sleep forever". "Justice may wink a while, but see at last". "Justice travels with a leaden heel but strikes with an iron hand".

Rehabilitation of dismissed judges: The Prime Minister walked through the rubble of 1988 and in the presence of the nation's greatest legal luminaries described the six jurists dismissed or suspended in 1988 as "towering judicial personalities". On behalf of the Government he recognised "the contributions of these six judges to the nation, and their commitment towards upholding justice".

He acknowledged "the pain and loss they have endured" and he announced ex-gratia payments to them. For reasons the layperson may not understand but lawyers do, the PM did not offer a formal apology or admit any wrongdoing. It is obvious, however, that he saw 1988 as a crisis and a tragedy the chapter of which he wishes to close.

Some faultfinders have lamented that the PM's gesture is hollow because the shameful verdicts of the two Judicial Tribunals remain part of the record. With all due respect, the executive has no power to reverse the two Tribunal reports. That would have to be a judicial task of great complexity at some future date and any attempt on the part of the executive to overrule the Tribunal reports would be a usurpation of the judicial power that we

Restoring judicial dignity

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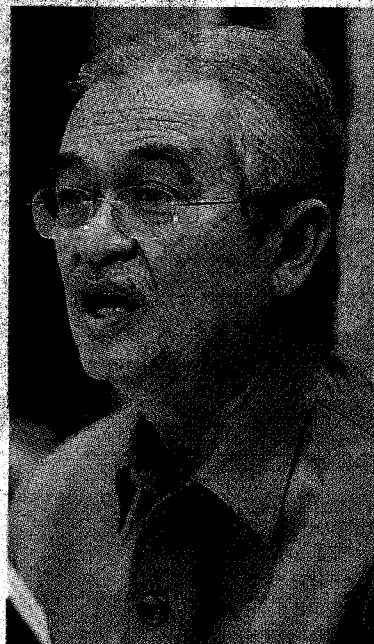
have criticised over the last two decades.

Appointments Commission: The PM announced the setting up of a Judicial Appointments Commission to identify and recommend candidates for the judiciary to the Prime Minister. He accepted that all primary stakeholders would have a chance to provide their input to the Government.

One hopes that the Commission will have a "mixed composition", firstly, of eminent law-persons from the judiciary, the Bar, the AG's office, the law faculties and the corporate sector. Secondly, eminent non-law persons from NGOs who feel the pulse beats of the nation must also be represented. Judicial decisions touch all lives and all sectors of society should have a say in the choice of our highest adjudicators.

Hopefully, the establishment of the Commission will create a more balanced and representative judiciary that will represent the regions, the races, the sexes, and the ideologies better than at present. The over-representation of the AG's office on the Bench must end.

Remuneration: The PM also announced an improved system of remuneration for our superior court judges so that the best legal minds



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can be persuaded to accept the elevation.

Comprehensive measures: The PM did not mince words that there are many voices of concern about the goings-on within the corridors of justice. He outlined the criticisms and allegations forthrightly. Most significantly, he admitted that the

process of revitalisation requires a "comprehensive package of reform to strengthen the capacity and credibility of the judiciary".

Separation of powers: The PM made a passing reference to the executive's commitment to the doctrine of separation of powers. This is heartening indeed though one must say that this commitment is not so evident if we look at the spate of "ouster clauses" in legislation ousting judicial review and making executive decisions "final and conclusive".

Sometimes one has to slip and fall in order to rise again. Malaysia is in this position as far as its judiciary's integrity and independence are concerned. Besides the commendable measures announced by the PM, the following other repairs and renovations to the legal edifice need to be attempted.

Article 121(1): The regrettable emasculating of the "judicial power" in 1988 should be reversed by restoring the pre-1988 law. The AG's power to transfer cases was secured by an amendment to Article 145. The case of Yap Peng was neutralised. There was no need to tinker with Article 121(1).

Article 125: The Tun Salleh episode had revealed flaws in the law relating to the composition of

the Judicial Tribunal, the choice of the Chairman, the seniority of the members vis-à-vis the judge to be tried.

Promotions: Hopefully the new Judicial Commission will deal not only with appointments but also promotions to the superior courts.

Subordinate courts: Eighty or so percent of our cases are heard in the lower courts. Yet we pay insufficient attention to the improvement of the system of justice in the subordinate courts. Legal observers suffer from this professional disease called "appeal-court-titis". One urgent issue is the need to separate totally our lower court judges from the AG's office.

Contempt of court: Disturbing incidents of senior judges interfering with the process of justice in courts below them are on record. This is contempt of court and no one, no matter how high and mighty, should be immune from the reach of the law on contempt of court.

Continuing legal education: As we go through life, the islands of knowledge begin to grow. But the shorelines of mystery begin to expand. All of us, including superior court judges, need continuing legal education in newly emerging areas. Keeping themselves abreast of the legal tides that continue to reach our shores is a task for the judiciary to plan and execute.

Preserving the rule of law and constitutionalism and enforcing the limits on executive and legislative power are ultimately matters of judicial character, integrity and ability. Legal reforms can help. But one must remember that systems are as good as the people who administer them. No one can help the judiciary if the judges do not wish to help themselves.

Dr Shad Faruqi is Professor of Law at UiTM