

Dr M 'assaulted' judicial independence, says Bar Council
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By Clara Chooi

KUALA LUMPUR, Feb 19 — The Bar Council has accused Tun Dr Mahathir Mohamad of stripping the judiciary of its independence, saying the former prime minister "assaulted" the institution with "Machiavellian ruthlessness" during his tenure.

Council president Lim Chee Wee said the 1988 amendment to Article 121 of the Federal Constitution had effectively tampered with the judiciary's independence, forcing the courts to be subservient to the executive arm of government.

"The Malaysian Bar has consistently held the view that Dr Mahathir Mohamed had with Machiavellian ruthlessness assaulted the once great Malaysian judicial institution.

"First with this amendment, then the sacking and suspension of the Lord President and Supreme Court Judges and later the appointment of three different Chief Justices, whose reputation the Bar holds in low regard," he told The Malaysian Insider in an emailed statement.

Lim: Amendment to law caused courts to be subservient to the executive arm of government. — File pic

Lim was responding to Dr Mahathir's claim in a blog posting on Friday that the constitutional amendment had not altered judicial powers but merely gave the Attorney-General the responsibility to choose which court should hear a case.

"The rights and functions of the judiciary have not been subservient to the politicians or the prime minister before or after the amendment.

"This is because the amendment involves only the procedure in which the A-G was given back the responsibility to transfer cases. It did not give the prime minister any authority to overrule the courts," he had written.

The country's longest serving former prime minister was denying the claim by former Chief Justice Tun Mohd Dzaiddin Abdullah last Saturday that the judiciary had become subservient to politicians after the former clipped its wings in the 1980s with the amendment.

Dzaiddin had said the change was repugnant because Parliament could now decide what powers the judiciary should be given, altering in a very fundamental way the basic structure of the Federal Constitution.

Agreeing with Dzaiddin, Lim said the June 10, 1988, amendment had removed the words "the judicial power of the Federation shall be vested in two High Courts" from Article 121, effectively deleting the provision that judicial power of the federation is vested in the judiciary.

Instead, he said, it was stipulated that "the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under federal law".

Lim recalled that when the Bill was being moved through Parliament, then Dr Mahathir had stated that its intent was to clarify the separation of powers, namely that the judiciary was to be prevented from interfering with the acts and functions of the executive.

"He (Dr Mahathir) had also stated that the amendment was to remove the powers of the judiciary in respect of judicial review, to make and develop Malaysian common law, and to do natural justice.

"This clearly is a misconception of the doctrine of separation of powers," Lim said.

Following the amendment, he said, it was later misconceived that the courts had become powerless to address issues wherever there was a lacuna (when the law is silent).

They were wrongly thought to be confined to interpreting and implementing acts of Parliament, no longer able to develop common law and deprived of their inherent right to exercise judicial review over decisions of public bodies and executive functions, he added.

Noting that the judiciary was finally on its journey towards restoring independence and credibility, Lim urged the apex court to strike down the 1988 amendment as unconstitutional and contrary to the structure of the Federal Constitution.

He commended Minister in the Prime Minister's Department Datuk Seri Mohamed Nazri Aziz for acknowledging the "shameful era" of the Malaysian judiciary and called on the latter to support another constitutional amendment, this time towards restoring judicial power.

"And the Bar urges all parliamentarians to support the Honourable Minister in this endeavour," said Lim.

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