Salleh: The law we had before was twisted

Q: Why haven't you said anything before this?

A: Why should I say anything? ...I knew whatever I said would not be reported. That is why *The Sun* described me as media shy, not without any reason... When I made a statement, my statements were twisted and truncated. A different version entirely came out... The decision makers were the editors who... put their own version. But now, the Press seems to be a little bit better.

Q: You have asked for provisions in the Constitution to be amended. Which provisions are you referring to?

A: In the Constitution, as originally drafted by the Reid Commission and implemented right up to the time of the judicial crisis, there are three branches of the Government. It is a question of vesting of these powers. Legislative authority is vested in Parliament. Executive authority is vested in the Yang di-Pertuan Agong, and exercised by the Cabinet in the name of Yang di-Pertuan Agong. The third branch is the judicial authority. Judicial authority is vested in the High Courts and the other courts as well.

Parliament may pass legislation to establish courts other than the superior courts, that is the High Courts in peninsula Malaysia and in Sabah and Sarawak, the Court of Appeal and the Federal Court.

Since the judicial crisis has taken place, the Government... has tried to clip the power of the judiciary. The way to do it, which I think is absolutely wrong, is to take away the vesting of judicial authority from the courts.

If you read the Constitution today, there is no such thing as "judicial authority shall be vested in the High Courts or Court of Appeal or whatever court". It says there shall be two high courts. Where is the power?

Q: Do you hold any hope of this (legislation being looked into and amended) happening?

A: I tell you the truth. After I was dismissed on Aug 8, 1988, I became absolutely disillusioned with the law. So much so that I never encouraged my children and grandchildren to study law. But I took my comfort and solace in becoming a simple gardener. But I kept on praying to God that a day would arrive that the truth would triumph.

Q: What is the truth?

A: The truth is that my dismissal and the suspension of five colleagues, two of whom were dismissed, was a great fraud on the judiciary. Somehow or other the truth will emerge.

Q: Was it the law that started the problem?

A: No... but the law that we had before was twisted. It was a clear example of the use of the law of the power. It cost the life of one judge, the late Tan Sri Eusoffe Abdoolcader. He was so disillusioned with the law.

Q: Are you willing to testify?

A: If I am called to give evidence, I definitely would like to do it. But it is up to the Government.

Q: Are there any unanswered questions from the 1988 crises?

A: There are a lot of unanswered questions. But I am not prepared to answer, to give details at the moment. The whole thing is all wrong.

Q: What do you think prompted the crisis?

A: It all started because of the two *Asian Wall Street Journal* reporters who made comments on certain things... and I think their visa was withdrawn. The matter went to court. The late judge Datuk Harun Hashim made a very strong comment on the part of the Government to withdraw the visa. From then, the Government started to see that the judiciary was interfering with the executive. A lot of statements were made by the previous PM against the judiciary... and judges felt very unhappy with it. I don't think I can go further than that.

Nazri: No reason to reopen the case

KUALA LUMPUR: The sacking of a Lord President and two Supreme Court judges in 1988 will not be reviewed. And that's final.

Minister in the Prime Minister's Department Datuk Seri Mohd Nazri Aziz said there were no solid reasons to re-examine the case.

"We cannot keep on questioning past issues, otherwise there'll never be any finality. There's no way we're going to re-open this matter," he said, commenting on a Press conference given earlier yesterday by former Lord President Tun Salleh Abas.

"He was tried by his peers. A panel of international judges was called. If we open this case, what other cases are people going to ask us to re-examine?"

In a case which many saw as a judicial crisis, Salleh was dismissed for misconduct in 1988 together with former Supreme Court judges Datuk George Seah and Datuk Wan Suleiman Pawan Teh.

A six-member tribunal comprising four Malaysian judges, a Sri Lankan judge and a Singaporean judge were appointed to decide the case.

When asked on allegations that the tribunal was a "kangaroo court", Nazri replied: "How can it be a kangaroo court? The judges were his peers. Are you saying that they were paid? You mean to say you can make deals with judges? I don't think so. No sane judge will make a deal to implicate his own brother judge."

Questions worth asking

■ **Comment by Santha Oorjitham**
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EIGHTEEN years after former Lord President Tun Mohd Salleh Abas and two Supreme Court judges were sacked, many members of the legal community feel the judiciary has yet to recover fully.

Chief Justice Tun Ahmad Fairuz Sheikh Abdul Halim has received poison-pen leters alleging corruption in the judiciary.

Former Court of Appeal judge Datuk Shaikh Daud Md Ismail has said that whether corruption started before or after 1988, it "seemed to surface" after the removal of Salleh.

Relations between the Bench and the Bar, which were frozen after the judicial crisis, have not completely thawed.

Malaysian Bar president Yeo Yang Poh's call last week for "a thorough re-examination of the events of 1988" could be a step towards truth and reconciliation. And in supporting the Bar's proposal at a press conference today, Salleh has laid out some of the thorny questions that should be tackled.

His first question was about the judicial authority of the courts: "Where is the power?" he asked, claiming that since the 1988 judicial crisis, "the Government has tried to clip the power of the judiciary."

In 1988, Article 121 of the Federal Constitution was amended so that judicial power which was originally vested in the High Courts was restricted to "such jurisdiction and powers as may be conferred by or under federal law". This, Salleh said, removed judicial authority.

Next, he turned to the power of judicial review, to deal with "complaints by the rakyat against "wrongdoing and abuses of power".

Ouster clauses in various Acts in Malaysia — such as the Printing Presses & Publications Act and the Police Act — make the decisions of ministers final so that they cannot be questioned in court. "Where can you go?" asked Salleh. Some lawyers point out that there is still scope for judicial review although it is now more limited.

He supported Yeo's call but stressed that making amends to him and his fellow judges was not as important as restoring the judiciary and rule of law. Malaysia claims to have rule of law, he noted: "What kind of law?"

If the country really wants to be governed democratically and in accordance with law, he said, provisions of the Constitution relating to the judiciary which had been amended should be "looked into and amended so that we would be in line with all other democratic countries".

The statute of limitation period is over. Salleh is not suggesting legal action: "It is too big for the courts to decide," he said.

But the legal questions asked by the former Lord President are worth serious consideration as part of ongoing efforts to clearly mark the separation of powers between the executive, judicial and legislative branches of Government.

Revisiting the issues raised by Salleh, including the subject of judicial authority and judicial review, could help the process of strengthening the judiciary.

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