

THE DOCTRINE OF THE INDEPENDENCE
OF THE JUDICIARY

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I- INTRODUCTION

The Federal Constitution which as the Malayan Constitution came into force twenty five years ago, has proved to be a strong foundation on which to base a system of government capable of securing an efficient executive sensitive to the need for political stability without which there can be no economic stability and no prosperity for the newly independent nation. There is no doubt that since 31st. August 1957, where Malaysia achieved its independence the country has gone from strength to strength, as can be seen especially in the economic Field, also social and politic. The most dramatic evidence is the value of Malaysian dollar which is today worth in terms of sterling double what it was at Independence.

Many factors have been responsible for the steady progress made by the country in so many areas.¹ Not least in the contribution made by the judiciary that has quietly maintained the supremacy of the Constitution and the rule of law, and determined the matters that come up before it fairly and impartially without fear or favour. The reputation that it enjoys of being able to decide without interference from the executive or the legislature, or indeed from anybody, contributes to confidence on the part of the members of the public generally that should they get involved in any dispute with the executive or with each other, they can be sure of a fair and patient hearing and that their disputes will be determined impartially and honestly in accordance with law and justice.

1. For more detail, see Emerson R. Malaysia, University of Malaya Press (1964).

Apart from transitional provisions the present constitution contains sixteen Articles dealing with the Judiciary.² Originally it contained only twelve Articles, but Act 26/1963 which brought into being Malaysia added Articles 122A, 122B and 122C with effect from Malaysia Day, 16th. September 1963, and in Act A 354 added Article 125 A. This is in contrast to the Federation of Malaya Agreement, 1948, the constitution in force immediately before Independence, which, apart from transitional provisions, had only seven clauses dealing with the judiciary.

As well known, the constitution divides the authority of the Federation into three kinds:³-

- (1) Executive authority (i.e. the power to govern) which is vested by article 39 in the Yang di-Pertuan Agong and exercisable, subject to the Constitution and Federal Law, by him or by any minister authorised by the Cabinet.
- (2) Legislative authority (i.e. the power to make law) which is vested by article 44 in Parliament; and.
- (3) Judicial power (i.e. the power to hear and determine disputes and to try offences and punish offenders) which is as mentioned earlier, vested in article 121 (1).

2. Article 121 to 131A, Part IX of the Federal Constitution.

3. Tun Mohamed Suffian Bin Hashim, An Introduction To The Constitution of Malaysia, Kuala Lumpur, Government Printer, 1976.

A- Role and Function of The Judiciary.

Generally the function of the judiciary is to do justice., In England, some three hundred and sixty - three years ago, Bacon who later become the Lord Chancellor of England, said "Judges ought to remember that their office is jus dicere and not jus dare, to interpret law, and not to make law, or give law."⁴ Thus judges have to decide cases according to the law enacted or laid down by the law makers. But what the law is, or, what it means is of course for the Judges to say. To achieve this the Judge must be independent. No man should be a Judge in his own ^{course} couse. A Judge must hear each side, a Judge should act only on evidence, a Judge should give reasons and a Judge should be beyond reproach.

A Judge "will do right to all manner of people after the laws and usages of this Realm without fear or favour, affection or ill - will"⁵. To be faithful is the test of his integrity as a Judge. Implicit in this is that he must resist outside pressures and of course corruption, Independence is, in other words a vital part of his judicial integrity.

4. Mr. Justice Kamal Mustapha Bokhary, "The Role of Judiciary In A Developing Country, "Malayan Law Journal, (1977) I MLJ XXVI.

5. The Rt. Hon. The Lord Blwyn - Jones, "Independence of The Judiciary," Malayan Law Journal, (1976) I MLJ Viii.