

Two rulings from a servile Malaysian judiciary on the Anwar case

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Two legal decisions in the case of former Malaysian deputy prime minister Anwar Ibrahim last month demonstrate the blatantly political character of the country's judiciary, which acts as little more than a rubber stamp for the needs of the government headed by Prime Minister Mahathir Mohamad.

The most significant took place on April 29 in the Appeals Court in Kuala Lumpur, when three judges rejected Anwar's appeal against his conviction in April last year on corruption charges and reaffirmed his six-year prison sentence. Anwar's lawyers took nine days to argue their case but the three judges announced their decision in a matter of minutes despite the vocal protests of Anwar. The reasons contained in the 59-page written version of the Appeal Court judgement defy logic and any conception of justice.

The case itself involved claims that the deputy prime minister had used his position to prevail upon the Special Branch police to force two individuals—his former driver Azizan Abu Bakar and Ummi Halifida Ali, the sister of his former private secretary—to withdraw their accusations against him. The allegations of sexual misconduct only emerged in late 1997 as sharp divisions were opening up in the leadership of the ruling United Malays National Organisation (UMNO) over the direction of economic policy.

As the political antagonisms intensified the lurid details of what amounted to little more than vindictive gossip were circulated at the UMNO conference in June 1998 in the form of a book—*50 Reasons Why Anwar Cannot Become Prime Minister*. When the political brawl came to a head in September 1998, the prime minister tried to use the accusations to blackmail Anwar into resigning. When that failed Mahathir sacked his deputy then had him and his supporters expelled from the party.

Anwar was only arrested after he made it clear that he would not go quietly and began to organise anti-government demonstrations accusing Mahathir and his ministers of corruption. He was taken into custody after a large protest in the centre of Kuala Lumpur. Even then he was arrested not on the present charges of corruption and sexual misconduct but rather under the country's draconian Internal Security Act which allows for lengthy detention without trial on security matters.

All of the above is common public knowledge in Malaysia and it points to a political fit-up aimed at eliminating a political opponent. But both for the trial judge Augustine Paul and his learned colleagues in the Appeals Court it was all completely irrelevant to the case. They obviously understood what was required of them and simply turned a blind eye to the most glaring deficiencies in the prosecution case while repeatedly blocking defence attempts to prove that Anwar was the victim of a political conspiracy.

The appeals court judgement included the following points:

* According to the appeals court judges, the heavy sentence imposed on Anwar was justified because he failed to offer anything in the way of mitigation and continued to maintain his innocence and to point to the political motives for his prosecution. Commenting on the political nature

of the defence case, the judgement states: "Instead the appellant delivered a speech not in mitigation but far from it."

* One of the grounds of appeal was that the presiding judge had arbitrarily amended the charges to suit the prosecution. Originally the prosecution had sought to prove that Anwar had engaged in homosexual activities and then used his position to have the police special branch force retractions. But as the defence began to demolish the accusations and undermine the case against Anwar, the presiding judge ruled that the prosecution did not have to prove the allegations of sexual misconduct, only that Anwar had approached the police. He then expunged all the evidence of Anwar's alleged sexual activities from the court record.

According to the appeals court, the judge's actions assisted the defence and protected Anwar's good name. In fact the reverse was the case. Judge Paul allowed the prosecution to present the lurid testimony of Azizan and Ummi, which was then seized upon by the government-run media to attack Anwar and his supporters. But he then denied the defence adequate opportunity to rebut the evidence and lowered the legal requirements necessary for the prosecution to prove its case.

* Anwar's appeal also challenged the credibility of the prosecution witnesses. But in its judgement the appeals court refused to even consider the issue and ruled that the trial judge had "first hand impression of them and he was fully aware of the various tests to be applied in ascertaining the veracity of witnesses". Like the rulings of Judge Paul, the appeals court decision rests on the assumption that there was no political conspiracy against Anwar and that the evidence of prosecution witnesses should be accepted on face value.

Yet there was plenty of indications that the allegations against Anwar were not bona fide. Ummi, a businesswoman whose advertising agency depended on a government contract, has close connections with the ruling United National Malays Organisation (UNMO). Prior to sending her allegations to Mahathir, she met with Mahathir's close associate and Anwar's arch rival Daim Zianuddin.

It was at Ummi's instigation that Azizan, Anwar's former driver, claimed to have been made "a sex slave" by his employer. A week prior to Anwar's sacking, on August 24, 1998, Mahathir held a private meeting with Azizan and the director of the police special branch. Azizan's testimony is central to the current case against Anwar on charges of sodomy. Others, who earlier alleged that Anwar had engaged in homosexual activities with them, have since retracted their statements and accused the police of intimidation and torture.

In a particularly revealing comment, the appeals court judges in considering the evidence of Azizan simply declared that they could not believe that anyone would admit to being sodomised in writing to the prime minister unless it had been true. In other words, evidence that pointed to Azizan being a liar who had colluded with Anwar's political enemies was simply dismissed as irrelevant.

* Perhaps the most crucial point in the appeals court judgement was its uncritical acceptance of the evidence of former police special branch chief

Mohamad Said Awang. The prosecution depended on Said's testimony to prove its assertion that Anwar had approached the police to force Ummi and Azizan to retract their statements. But under cross-examination, Said openly admitted he would lie in court under oath if ordered to do so by "someone higher than the deputy prime minister"—a clear reference to prime minister Mahathir.

The appellate judges simply declared that even though Said had admitted to being willing to lie under oath he had not in fact done so. Of course no evidence was offered to back up the claim. The judgement simply stated: "From the sum total of evidence, we are not convinced that they have told lies on material matters. Maybe they are guilty for obeying unlawful superior orders because of their failure to assert their professionalism. But that does not mean they were telling lies."

A ruling on April 21 by judge Arifin Jaka in Anwar's current trial is further confirmation of the highly political character of the Malaysian judiciary. Anwar's defence lawyers had called for Mahathir to be put in the witness box to answer questions about the case. The attempt to subpoena the prime minister was opposed both by the prosecution and by Mahathir himself, who wrote a 14-page statement to the court arguing why he should not be a witness.

Arifin simply declared: "There is not an iota of evidence by any witnesses so far to show that Dr Mahathir is involved in a political conspiracy to topple Anwar. Under these circumstances it is futile to call Dr Mahathir to give evidence in this trial."

Natural justice dictates that an accused be able to call witnesses to establish the case. But according to Arifin, Anwar would only be able to subpoena Mahathir if he would prove that the prime minister had been involved in a political conspiracy. In other words, the defence would have to prove its case before being able to call a key witness to prove the necessary testimony.

As well as the circumstances of Anwar's arrest and the close connection of key prosecution witnesses with his political enemies in UMNO ruling circles, there are further indications of the involvement of Mahathir and others. Firstly, Mahathir was also home minister at the time and thus would certainly have been consulted by top police before Anwar was detained. Moreover, Mahathir would also have had to approve the use of the Internal Security Act that allows the home minister to order indefinite detention without trial. Finally no lesser figure than the then Inspector General of Police Abdul Rahim Noor was directly involved in the arrest—a fact that emerged only later when it became clear that Noor had physically assaulted Anwar in police custody.

But if Arifin was after direct evidence of a political conspiracy then it was provided on February 11, by a former UMNO member, Raja Kamarudin Raja Abdul Wahid. He testified that as head of a UMNO local branch, he had been called into the office of Mahathir's political secretary Aziz Shamsuddin in 1998 and told to organise the political destruction of Anwar and his supporters. Raja Kamarudin also said in court that Aziz admitted that he was responsible for the circulation of *50 Reasons Why Anwar Cannot Become Prime Minister*. Aziz is now deputy education minister and was one of the witnesses the defence team wanted to call after Mahathir had given evidence.

Clearly Mahathir was deeply concerned at the prospect of taking the stand and being subject to questioning by Anwar's lawyers. As a close political confidante of Mahathir for many years, Anwar was in a position to know in which closets all of the prime minister's skeletons are to be found. The potential for politically embarrassing surprises in court was obvious. Thus Arifin's decision had little to do with the norms of justice but was to protect the prime minister of the day. An appeal by Anwar's lawyers against the ruling is due to be heard on June 5.

The judiciary in any country plays a very political role on behalf of the ruling class and their political parties. But in most cases there is an attempt at least to dress up the proceedings with a semblance of

impartiality, legal precedent and due process. In the Anwar trials the judicial decisions have been blatantly political ones—all the more significant as there is no jury to decide a verdict. The rulings point to both the acuteness of the political crisis provoked by Anwar's sacking and arrest, and also to the politically servile character of the country's judges.

The present judiciary is descended from the colonial judges who presided under the British and in particular enforced a whole battery of anti-democratic laws used to suppress the Malayan Communist Party guerrilla insurgency during the so-called Emergency from 1948 to 1957. Unlike the ruling elites elsewhere in Asia, those in Malaysia can claim no involvement at all in any anti-colonial struggle. UMNO and its conservative coalition allies were handed independence and power on a platter after the "Emergency" was ended.

While formally a democracy, Malaysia has all the trappings of an autocratic state—government-controlled media, a gerrymandered electoral system, a series of draconian laws limiting everything from the unions to the rights of students and public servants—and a politically pliable judiciary. From the outset the judges were hand-picked political appointments whose main qualification for office was political loyalty to the ruling UMNO political machine. Despite the fact that non-Malays—ethnic Indian and Chinese—dominate the legal profession, the majority of the country's judges are Malay.

According to one writer on Malaysian politics: "On the whole, the judges shared the broad conservative outlook of the rest of the Malay elite. Although from time to time the courts handed down decisions unfavorable to the government, in general the judges rarely showed interest in reinterpreting the law in ways that might restrict the prerogatives of the government and its bureaucracy. For example, the courts rarely questioned the government's powers under the emergency provisions or the ISA [Internal Security Act] and hardly ever found legislation to be in conflict with the constitution (Harold Crouch, *Government and Society in Malaysia*, p. 138).

The ISA is one of the country's most repressive laws, allowing, in practice, the government to detain anyone it sees fit without trial for lengthy periods of time. The judiciary have not only supervised the law but extended its application to suit the government. In one key case in 1969, for example, the highest Malaysian court, the Federal Court, ruled that it was entirely up to the state executive to determine if a detention was reasonable under the ISA—essentially making arbitrary detention under the ISA unchallengeable in court.

On the isolated occasions that the courts have mildly challenged police actions under the ISA or other repressive laws, the government has made either the law or the constitution even more anti-democratic. UMNO-led governments have used their two-thirds parliamentary majority to amend the constitution 34 times between 1957 and 1994. As a result the judiciary, even if it had any pretensions to independence, has been fenced in even further.

The political subservience of the judiciary became even more pronounced following the elevation of Mahathir to prime minister in 1981. Mahathir's regime has been characterised by government-promoted economic development in which the contracts typically went not to the best bid but to those companies or individuals with closest links to the UMNO leadership. More and more the state apparatus and its sweeping powers have been used to prevent any close scrutiny of the government and its business cronies and to suppress any political opposition.

In the mid-1980s, a series of court rulings irritated the Mahathir leadership. In one case the Supreme Court ruled that two journalists of the *Asian Wall Street Journal* were denied "natural justice" because they had had their work permits revoked without being allowed to defend themselves. The decision had clearly been taken as a warning to foreign correspondents to toe the government line.

In October 1987, much to the annoyance of the UMNO leadership, the

high court issued an injunction against a large contract awarded to a company connected to UMNO on application of opposition Democratic Action Party (DAP) leaders Karpal Singh and Lim Kit Siang. Although the ruling was overturned by the Supreme Court and the two DAP members were arrested, the Mahathir leadership initiated a campaign to further tame the judiciary.

In a parliamentary speech in 1987, Mahathir attacked the very conception of judicial independence and natural justice as being derived from Britain and having no place in the Malaysian legal system. "Judicial review gives unlimited power to the interpreters of laws who can obstruct the implementation of any laws at all," he complained, adding: "Natural justice can be interpreted in various ways according to the discretion of the judge" (quoted in Crouch, p. 141).

The judiciary was further disciplined in 1988 when a split that opened up in the UMNO leadership developed into a bitter legal battle over the control of the party and its assets. When the president of the Supreme Court, Tun Salleh Abas, got in Mahathir's way, the prime minister simply had the king dismiss him. When a panel of five judges issued a ruling in favour of Tun Salleh, Mahathir had them all suspended. Two were eventually thrown off the bench. With such a precedent it is little wonder that few of the Malaysian judges are prepared to do anything other than hand Mahathir the rulings he wants.

Given the nature of the Malaysian judiciary, it is perhaps more pertinent to ask not why Anwar is in jail but rather why the entire affair has not been legally wound up and buried long ago. The fact that the trial has been strung out for so long, and indeed a second trial was instituted in the lead-up to last year's national elections, is further indication that the sacking of Anwar reflected deep-seated divisions in the Malaysian ruling class and a broader political crisis that cannot simply be willed away by autocratic diktat or judicial fiat.



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