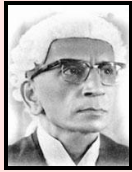


A VOTE OF NO CONFIDENCE ?



Dr R. Ramani

ONE OF MALAYSIA'S greatest lawyers was the late Dr R. Ramani. He was the Chairman of the Malayan Bar Council from 1953 to 1960 and from 1961 to 1963. For the records Dr R. Ramani was the second person to lead the Malayan Bar under the Advocates & Solicitors Ordinance 1947 the first being E.D. Shearn (of Shearn and Delamore fame) who led the Bar from 1947 to 1953. On the 30th day of October 1961 elevation ceremony proceedings were held at the Supreme Court, Kuala Lumpur to welcome Mr Justice Mohamed Suffian to the Bench of the High Court. Dr R Ramani spoke in felicitation on behalf of the Malayan Bar. Inter alia, he said:

“These days it is unfashionable to refer to the traditions of British colonialism in any terms of praise. But I am unashamed to confess before you today that we, the Bench and the Bar of this country are heirs to three noble traditions deriving from that colonialism; first of all, the English language; secondly, the British system of justice; and lastly, and by no means least important, the British spirit of democracy.”

The English people also gave the world The Magna Carta. The story behind the Carta is a simple one. It goes like this in the words of Lord Denning who spoke at the 750 the Anniversary of the signing of the Magna Carta in June 1965:



Lord Denning

“Seven centuries and a half ago in the month of June 1215 the meadow of Runnymede looked much as it does today. The season was early and the commoners of Egham had cut their hay. To this meadow came the King and the Barons. Their parleys culminated in the greatest constitutional document of all time. It is commonly called Magna Carta or the Great Charter.”

The Magna Carta was the first legal document which the people had forced onto a sovereign King whereby they limited the powers and privileges of the King and bestowed power on the people. It was here that the seeds of the Westminster style parliamentary democracy was sowed and now seen all over the face of the earth.

The English people also introduced to the world the no confidence motions. That the masses or peoples who elected their leaders have ceased to have further confidence in the leadership for whatsoever reason. A no vote of no confidence or motion of no confidence on a Prime Minister or President must of necessity be a reflection of his cabinet and people around him for it was the Great soldier statesmen and law maker Napoleon Bonaparte who said:



Napoleon Bonaparte

“Those who failed to oppose me, who readily agreed with me, accepted all my views, and yield easily to my opinions, were those who did me the most injury, and were my worst enemies, because by surrendering to me so easily they encouraged me to go too far. I was then too powerful for any an, except myself, to injure me.”

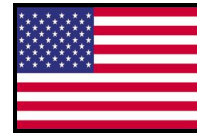
So what kind of animal is a vote of no-confidence?

It is claimed by historians that the first record of a vote of no confidence took place in the United Kingdom in 1782. It took place after the British defeat in the American colonies in Yorktown. When this took place King George III received the letter of resignation from the Prime Minister. In democracies an angry parliament spurned by the incompetence of a prime minister normally moves a vote of no-confidence against the Prime Minister. No confidence in his competence. No confidence in his leadership. Just no confidence and that is suffice to pass a motion and any leader with self-esteem pride and dignity would throw the towel and move away from the stage. It must be clear that a vote of no confidence does not imply that the person has committed a crime.

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There can be many types/forms of motions. There have been financial motions, amendment motions, motions of censure, motions of no confidence and general motions. A motion of censure or censure motion may be submitted when an elected officer of a body or society did not behave within the code or if he did not fulfill his duties. This motion can be normally submitted against any elected person. This is similar to a motion of no confidence. In the United Kingdom and possibly in other jurisdictions office bearers who act contrary to the wishes of the members could be taken to Court. But this may turn out to be an expensive outing. So alternative devices are normally used and they might be:

1. resulting in bulk resignation and in starting a rival society;
2. requisitioning an EGM and voting officers out of office; or
3. await AGM and vote for change of officers



In the United States of America the President of America may be removed from office by a motion of impeachment. He is tried in the Senate and if found guilty removed from office. It is believed that no President has ever been expelled from office by impeachment. Andrew Johnson and Bill Clinton went through the ordeal of impeachment but were found not guilty. After the Watergate Fiasco the infamous Richard Nixon was very near impeachment but he had the good sense and cunningness to resign from the Presidency and save the ordeal.

In some jurisdictions a vote of no confidence is also categorized as a motion of no confidence, a motion of censure or a just a no confidence motion. The Houses of Parliament passes or rejects the motion. In the Westminster style system of Governance when a motion of no-confidence is passed the Government must resign or in the alternative offer to dissolve parliament and or call for a general elections. In political playbooks motions of no-confidence are a norm. It may be said to be a form of impeachment. It does not however or necessarily mean that the person or persons under such a vote or motion has committed a crime and it does not imply misdoing or wrong doings. It is a system that is accepted in democratic institutions and bodiel to remove people from office. It has to be noted that such a motion or vote is a very serious slur as it might suggest lack of faith in persons in charge and calls for them to vacate the office they hold. In a democracy it might show peoples will desire and plan to change the Government before the next scheduled elections. To burn their bridges. A change in mid-stream for reason or reasons best known to the electorate. It is their will and pleasure. Their right. They are the people who elect and they are the people who may reject. It is their democratic and God given right. The right to hire and fire.

It is axiomatic that a no-confidence motion or vote is an important element in the Westminster type of democratic Government. In the United Kingdom, there have been a total of 11 prime ministers defeated through a no-confidence motion. They can be used to replace committees Governments or those in authorities. Typically, when parliament votes non-confidence, or where it fails to vote confidence, a government must respond in one of two ways:

- a) resign
- b) seek parliamentary dissolution and request a general election

It is plain as the day the night follows that the house or the electorate being supreme may elect and might if it so desires fire. An assembly like Parliament is the highest authority and the membership is so in any organized society of men.

In certain State Bars in India a notice of no confidence may be moved by not less than 13 members of the bar (wonder why this unlucky for some number ?) and shall be handed to the Bar Secretary in person, who shall convene a meeting within 15 days of date of receipt thereof. The chair and persons concerned shall cease to hold office on the expression of No-Confidence by a majority of members present of voting at the meeting (Rules of Bar Council, Hyderabad).

Nearer home in Johor Bahru former Johor Corporation boss Tan Sri Muhammad Ali Hashim resigned from the board of all six listed companies under the state investment arm ahead of a series of EGMs called to remove him. (The Sun 13-1-2011). The Starbiz of 13-1-2011 reported that the EGMs called to remove Tan Sri Muhammad Ali Hashim, the former chief of Johor's state investment arm Johor Corp (JCorp), from his position as chairman at three companies under the JCorp stable have been cancelled as Ali has relinquished his position from all the outfits.

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Elected leaders must have the self-esteem, will, tenacity and pride to face no confidence motions that may be launched against them from time to time. After all nothing is stagnant. You may be liked one day and despised the next. One has to accept changes. In November 2008 a motion of no-confidence was moved against 4 office-bearers and 2 members of the Bar Council of Malaysia. The mover of the motion wanted the then President Datuk Yeo Yang Poh, Vice President Dato S. Ambiga, Secretary K. Ragunath and Treasurer Vazeer Alam Mydin Meera and 2 past President Datuk Haji Kuthubul Zaman Bukhari and Sulaiman Abdullah removed from office. An Extra Ordinary general meeting was requisitioned for the sole purpose of passing the no confidence motion against members of the august body and those in power readily convened the EGM and put forth the motion for debate. The Motion was however overwhelmingly defeated at the Extra-Ordinary General Meeting with 1032 members voting against the Motion and 182 for it with 27 abstentions.



Datuk Haji Kuthubul Zaman



Datuk Yeo Yang Poh



Dato S. Ambiga

In some jurisdictions like the USA, a no confidence vote is a symbolic act which draws the peoples and the Governments attention to the people loosing confidence and alerts the people and Governments to some problems that need to be addressed. A no confidence motion also prepares a successor and paves the way for smooth transition. It may be said that such a vote or motion is to gauge whether a particular leader has lost him support from the electorate and if the electorate wishes to change their leaders in mid-stream and not wait till the next elections. Facing a no confidence motion may be a means to show an indicator of confidence.

It is a normal democratic process. It gives people the power to change. And people in power ought not to be arrogant but meet with the challenges that may be thrown at their leadership from time to time. It is also to test the waters and to ensure there is no abuse of power. As Henry Cecil in the book *“The English Judge”* said: **“Every sane person abuses his power from time to time”** and Bertrand Russell wrote: **“Men who allow their love of power to give them a distorted view of the world are to be found in every asylum.”** In the book *“With Justice For None”*, Gerry Spence wrote: **“Power! We see it, but sometimes it confuses us. It is mysterious. It may even seem holy.”** He said **“Power does strange and evil things.”** T.N Seshan was Indian Commissioner for Elections. In his book *“The Degeneration of India”* he noted that nobody in India (for that matter anywhere in the world) readily gives up or sheds power except the Central Electricity Board! The C.E.B in India practices power shedding to conserve and or save energy!

It may be plain that if a no confidence motion is defeated the confidence in the incumbent remains unimbedded and unbridled. And again there is no barrier for opposing parties to table a motion of confidence. According to British parliamentary procedure the Government of the day may respond to a no confidence motion by in fact calling for a confidence motion. Once the 2 motions are debated and if the no confidence motion is passed the official or Government must resign or call for fresh election. On 18-1-2011 The Irish Times reported a no confidence motion against the coalition Government may be responded with a motion of confidence in itself moved by the Government.

From the above researches into the not so hidden mysteries of motions of no-confidence it appears that such a creature is a power in the hands of the electorate to keep those upon whom they have bestowed powers in check and balance. It is human nature for people bestowed with power to be most reluctant to shed at or give up power but if the electorate so wills the no confidence motion is a tool and means and an avenue to change leadership in midstream. All manner of peoples especially leaders in various and a variety of spheres must move with the times and be sensitive and sensible to change if not as Martin Luther King said **“our lives begin to end the day we become silent about things that matter.”** President Barack Obama in a landmark speech said that **“I am convinced that in order to move forward, we must say openly the things we hold in our hearts.”** It is interesting however that One who is and was greater than King and Obama said that **“he who is free of sin shall cast the first vote (sic) stone!!”**. And our 1st Prime Minister the Tunku is quoted to have said in the parliament that if we have to stone all wrong does there will be no more stones left in this country!



Martin Luther King



Barack Obama



Tunku Abdul Rahman

S. Balarajah
Chairman, Johore Bar
31st day of January 2011