

# Keystone of the govt arch

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**T**HE Cabinet and the office of the Prime Minister evolved in the UK in the 18th century In the later part of the 19th century the authority of the Prime Minister became firmly established due to the outstanding personalities of Disraeli and Gladstone and the rise of a two party system

In all parliamentary democracies today the Premier has become the keystone of the constitutional arch He is likened to an elected monarch and a chief executive more powerful than the American President

His pre-eminence at the heart of the political system is best understood by examining his relationship with the other functionaries of state

**The PM and the King** The Yang di-Pertuan Agong is the symbolic head of state but the Prime Minister is the actual head of government Executive power effectively resides in his person

The Premier is appointed by the King but cannot be dismissed by him as long as he enjoys the confidence of the Dewan Rakyat

The relationship between the Yang di-Pertuan Agong and the PM is governed by Articles 40(1) and 40(1A) which provide that the King is a constitutional monarch who is bound by the advice of the Cabinet in the entire range of his functions except as to a few matters mentioned in Article 40(2)

Conventionally advice of the Cabinet means advice of the Prime Minister because the PM is the channel of communication between the Cabinet and the King He has the exclusive right of audience with the Yang di-Pertuan Agong This exclusive con-

tact with Istana Negara enhances the prestige of his office

The King while bound by advice is free to seek further information and to advise caution and warn But it is not the King's constitutional function to verify the consensus within the Cabinet The PM determines what the collective view of the Cabinet is that is to be communicated to the monarch

**PM and Cabinet** The Prime Minister's

power to appoint his Cabinet colleagues without any constitutional need for approval by Parliament (as in the US) or by his party is his most decisive weapon

Under Article 43(2)(b) the PM presents a list of his proposed ministerial colleagues to the Yang di-Pertuan Agong He is entitled to insist on his choice

The PM has the power to choose switch promote demote and dismiss his colleagues

His visits overseas his speeches to the public and appearances on TV his answers or interventions in the Dewan Rakyat attract a degree of attention which no other politician can hope to achieve

**PM and Parliament** Though legislation is the constitutional function of Parliament the reality is that the executive is more important than Parliament in the legislative process

A Prime Minister with a comfortable majority in Parliament tends to dominate the legislative sphere It is often said that because of his control of Parliament the Prime Minister in a parliamentary system has much more operational efficacy than the US President

The PM chooses the 43 senators who are appointed by the King to the Senate under Article 45(1) The summoning prorogation or dissolution of the Dewan Rakyat is on the PM's advice Only in relation to dissolution does the Constitution in Article 40(2)(b) give to the Yang di-Pertuan Agong a right to reject the PM's advice

If the Dewan Rakyat is dissolved for an election the PM and his Cabinet continue in office in a caretaker capacity for the 120 days the Dewan may be in dissolution under Article 55(4)

**Posts and patronage** The PM figures prominently in the appointment of all important constitutional posts Among these are judges of the superior courts Attorney General 43 appointed senators Governors of Malacca Penang Sabah and Sarawak Datuk Bandar of KL and Labuan Auditor General chairmen and members of the Council on

and place them in order of seniority. He may create a new ministerial office or wind up one. He may transfer functions from one minister to another. He may designate one of his ministers to the extra constitutional post of Deputy Prime Minister.

Parliamentary secretaries and political secretaries are appointed by the Prime Minister without prior reference to the King.

The Premier may require a minister to resign at any time and for any reason he thinks fit. If the minister refuses to comply, the PM may advise the Yang di Pertuan Agong to dismiss him.

In *Datuk Seri Anwar Ibrahim v Perdana Menteri* (1998) the Court held that the letter of dismissal need not come from the King. It was sufficient for the monarch to be informed before the PM dismisses his colleague.

The Prime Minister can determine when the Cabinet shall meet and what shall or shall not be discussed. He is entitled to say what issues shall be referred to him personally for decision outside the Cabinet. Inter departmental disputes or deadlocks in Cabinet committees may be resolved by his informal rulings.

The PM is not bound by Cabinet advice. He may by personal initiative confront his colleagues with a fait accompli. Many decisions are taken by the PM alone or by him after consulting one or two ministers in his inner Cabinet.

In budget proposals in foreign policy initiatives on advice to the monarch to dissolve the Lower House and on major appointments the Cabinet may not be consulted. For example in 1956 British Prime Minister Anthony Eden ordered British forces to invade Egypt without prior consultation with his Cabinet.

The PM can create committees of the Cabinet, choose their membership, prescribe their terms of reference and give them decision making power. He may preside over some committees.

He may create an advisory body of outsiders to counsel him on any particular matter. These developments mark a diminution in the position of the Cabinet as the ultimate seat of executive power.

The PM is an international figure besides being a national leader. In a globalised world the centrality of foreign trade and foreign relations has augmented the prestige and power of the PM.

Islamic Religious Affairs, National Finance Council, Election Commission, Armed Forces Council, Judicial and Legal Service Commission, Public Services Commission, Police Force Commission, Education Service Commission and Human Rights Commission.

No important public service appointment, whether of a vice chancellor or chairman of a statutory body, can be made without the consent of the Premier, even if legally the power belongs to an individual minister.

In addition to the above, the PM enjoys by convention substantial powers of patronage. If he does not give a political office to someone he wishes to reward, he may give him a place on the honours list or confer on him chairmanship of a statutory corporation or an advisory or consultative body, a royal commission, a commission of inquiry or an ambassadorship.

The scale of his power of patronage is astounding and no medieval monarch could compare with it, either in numbers or in importance.

**PM and party** As leader of his party or coalition, he has a powerful organisation behind him to project his image in a most favourable light. In recent decades, the fortunes of political parties have fluctuated with the image that the PM creates in the minds of the electorate.

**PM and the civil service** The Chief Secretary to the Government is the PM's personal choice. Through him, the PM is able to control the top echelons of the civil service.

In sum, no serious constitutional scholar today can deny that since the 1920s cabinet government has been transformed into prime ministerial government.

Parliamentary governments headed by the likes of Jawaharlal Nehru, Indira Gandhi, Lee Kuan Yew, Golda Meir, Margaret Thatcher and Mahathir Mohamad illustrate that a PM with a comfortable majority in the Lower House is not just *primus inter pares* (first among equals). He/she is like a sun around which the planets revolve.

But what must not be forgotten is that there are many unseen political and conventional correctives that limit the powers of a Prime Minister.

**(Next Correctives on the powers of the PM)**

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