

## **Can separation of powers in M'sia become reality?**

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The recent announcement by the Prime Minister Najib Tun Razak of pending political reforms is an important step in the right direction for the country.

These reforms are needed to complement the earlier economic ones. The prime minister's boldness in enacting these reforms has been applauded by all quarters, except for Malay supremacist groups such as Perkasa who have been agitating for the harsher use of punitive laws against groups opposed to their notion of Malay rights and who are against any liberalisation of the status quo.

However, critics and cynics have questioned whether the reforms are being undertaken by the government to gain popularity and to counter the increasing potency of these civil liberty issues in the coming general elections.

Concern has also been expressed on whether the new laws to deter terrorism may be misused by the authorities and may have the same effect of stifling legitimate dissent.

Also the proposed decision to abolish annual licencing for the print media under the Printing Presses and Publications Act is really a minor improvement since the home minister's decision not to renew a licence is final and cannot be disputed in any court of law.

At the same time, there also appears to be no move to rescind or amend the Sedition Act and the Official Secrets Act which have been used to muzzle legitimate political dissent.

For now though, Malaysians should comfort themselves that the proposed new laws will - if truly implemented - take some powers away from the Home Ministry and return them to the judiciary.

This makes the role of the judiciary even more important to ensure that there is no abuse of power by the executive.

Restore the independence of judiciary

Separation of power of the main branches of the state is a core characteristic of all democratic systems. Adherence to this key concept is also critical to the protection of constitutional rights and the attainment of Vision 2020's lofty goals.

The drafters of our constitution had laid the groundwork for this by specifying "the supremacy of the law and the power and duty of the Courts to annul any attempt to subvert any of the fundamental rights [contained in the constitution] whether by legislative or administrative action or otherwise" (Reid Commission Report, para 161).

Since 1988 however, the independence of the judiciary has been compromised by numerous actions which have undermined its powers and circumscribed its responsibility to defend the constitution from legislative and other pressures.

If the prime minister is really serious about his "commitment to making Malaysia a modern, progressive democracy that can be proud to take its place at the top table of international leadership", the restoration of the independence and integrity of the judiciary must be his next reform.

Among the necessary steps for this reform process to take place are the following:

- \* Establish an independent judicial commission to ensure transparency and objectivity in the appointment and promotion of judges and to protect judicial integrity.

\* Ensure the judiciary has the exclusive authority to decide whether an issue submitted for its decision is within its competence as defined by law.

\* Require all executive decisions to be subject to judicial review.

The prime minister must realise that a manipulated and dependent judiciary can only lead to a weakened democracy.

The public's impression of a compromised judiciary was very much at the heart of the recent Perak state government coup d'etat which saw the ousting of the Pakatan Rakyat government and its replacement by what many Perakians - including myself - regard as the illegitimate government of the BN in February 2009.

At that time, I had made the appeal to the Sultan of Perak in my open letter in the following manner: "To the letter of the law a government must be answerable, and the one standing above politics must be accountable as well.

In my humble opinion, Perak will regain its shine and the people's trust when the sultan accedes to the dissolution of the state assembly."

According to US diplomats in a leaked WikiLeaks cable, the BN victory in Perak was a "successful political power play both in terms of brute and refined power".

The diplomats also commented that "(This) reminds us that of the two coalitions, only the BN has the clout, money, and ability to manipulate the government system (Election Commission, Courts) to muscle its way to power,"

Until the separation of powers is fully established and respected, we can expect more such anti-democratic power plays and for the "modern and progressive democracy" that the prime minister aspires towards to remain a distant goal.