

The king needs to intervene
Malaysiakini.com
Sept 18, 2008
Abdul Aziz Bari

The way Prime Minister Abdullah Ahmad Badawi responded to journalists' question on Anwar Ibrahim yesterday afternoon indicated that he actually treated the takeover threat posed by the opposition leader very seriously.

The night before Abdullah was reported to have said that Anwar's claim that the opposition had enough MPs to form the government was "mirage and dream" and that Anwar was just bluffing.

But less than 24 hours later Abdullah changed his tone: Anwar is now a threat to both the national security and the economy; something which alluded to the possibility of using the Internal Security Act to detain the opposition leader.

The government is obviously under siege. Apart from the Anwar threat, the ruling party is now grappling with internal power struggle. Given the way ministers view the use of ISA, it is hardly convincing to say that Abdullah is in full control of the cabinet.

It is not incorrect to say that we are now approaching crisis stage and in times like this we need something that perhaps appears to be somewhat extra-constitutional to handle the situation.

It is rather naïve to expect the ordinary way of doing things here. For one thing, the government appears to be panicking and as such no longer in a position to say, advise the Yang di-Pertuan Agong which, in common parlance, includes also the routine running of the administration.

It was curious to find that two days ago Abdullah met up with senior public servants; the secretary-generals of the government ministries who, under the constitution, are supposed to be neutral and loyal to the country.

A week ago, the armed forces chief General Abdul Aziz Zainal ruffled feathers when he told the government to act against those involved in creating tension between races in the country.

Apart from the unusual nature of the call, one knows that the main culprits were certain elements during the ruling party Umno itself: one of its divisional leader has been suspended from the party.

The only option

In any case, the call was not the only occasion whereby the normally apolitical armed forces crossed the line. Some months ago there was a joint exercise between the army and the police to deal with public unrest which provoked public outcry.

Unlike our neighbours such as Thailand and Indonesia, we do not have a constitutional court to turn to. We have the Federal Court that virtually plays that role. But for the past 51 years, it has never been called upon to adjudicate constitutional impasse before.

And unlike the Supreme Court of the United States - essentially the American constitutional court which has been called upon to decide on highly controversial issues such as abortion and affirmative actions - our Federal Court was ignored during the constitutional crises of 1983, 1988 and 1993.

Perhaps this has got something to do with the confidence and faith the people have in the credibility and ability of our top judges.

That leaves us with one option: going the Yang di-Pertuan Agong, the king, or the Conference of Rulers where all the nine rulers sit to discuss, among others, federal matters.

And actually the king has some specific role and powers that can be used in the current situation. He may get some help from his nine brother rulers in conference which, the constitution says, may discuss anything it thinks fit.

The problem that we have now essentially revolves around the appointment of government which in the constitutional term, the appointment of the prime minister.

agong power in the change of government 170908The constitution has put this duty on the king's shoulder: it is his discretion. In situations whereby it is clear-cut - that there is a majority with a clear leader - the king has no option but to appoint that leader as the prime minister and then take his advice on the formation of cabinet.

That situation can happen on several occasions. These include after the general elections, the death of the sitting prime minister and resignation.

Resignation can take place in various situations; such as the normal one like that of Dr Mahathir Mohamad in 2003 or when the House decided that it no longer support the head of government such as the one we saw in the resignation of Harun Idris as the menteri besar of Selangor in 1976 or that of Mohamed Nasir in Kelantan in 1977.

It is unfortunate that our constitution is silent on the matter. The only provision dealing with the issue is Article 43(4) which makes it mandatory for the prime minister, upon losing the support in the house, to resign.

What can the king do?

But the provision is silent on the question of censure, which is the normal way for the House to withdraw its support from the sitting premier. This has apparently been manipulated by the ruling Umno and Barisan Nasional.

Although they were behind the moves that took place in Sarawak in 1966 - ousting Chief Minister Stephen Kalong Ningkan - and Harun Idris in Selangor, they sing different tune this time around.

We have seen how the speaker of the present Dewan Rakyat - virtually appointed by Prime Minister Abdullah - did his best to thwart the attempt made by the Pakatan Rakyat to table the motion of confidence.

But law stands and whatever they have to say we need to follow the law as it is.

king and parliament official opening 12th parliament session How does the king come to the picture in the present impasse? As a matter of law, the king has to act on the advice of the government. And thus, although the constitution does not say it, he must ensure that he has a government at all times.

And when there is a situation where there are questions and claims being about the fitness of the sitting government, the king should not just sit back and wait: he must move forward and take charge of the situation.

Apart from his constitutional duties, apparently, in our system now, there is no one else to do so. We cannot rely on the government for its legitimacy - some may say its legality - to stay in power is very much in question.

As a matter of protocol it might be improper for Anwar to go the palace now. As such, the king should send for him in order to furnish him with the list of MPs he has been claiming.

Of course, the king has every right to speak with MPs to ascertain the truth. This was indeed done by the Rulers of Selangor and Perlis in the aftermath of 12th general election last March.

Should the king find that the claim of Anwar - that he has got enough MPs to form the government - to be true then the king should tell Abdullah to tender his resignation.

As has been stated above, a prime minister who has lost the support of the House has a legal duty to resign together with his entire cabinet.

The original draft prepared by the Reid Commission contained a provision which empowered the king to dismiss such a premier but somehow was deleted in the final draft which now stands as our constitution.

But the king could still assert the power as it is obviously necessary to remove the clog that stands in the way of government appointment.

Suspending the constitution

In any case, the recalcitrant prime minister is no longer prime minister as he has lost the support: in other words, the king is just doing something to allow the constitution to function.

Article 43(4) of the Federal Constitution also talks about dissolution.

However one needs to read this provision in conjunction with Article 40(2)(b) which gives the king a discretion whether or not to grant a dissolution requested by the prime minister.

The Reid Commission recommended that there are reasons - given the experience of the Commonwealth - why the matter should be left for the king to decide.

One of the reasons was to prevent the country from being put on "dissolution diet" by a besieged government.

Coming back to present situation, it is constitutionally incorrect for the king to grant a dissolution to pave the way for another round of elections: we have just had one in March

and that now there is a likelihood to form a government without going through another elections.

The possibility of invoking Article 150 which empowers the federal government with vast powers - virtually suspending the constitution - has been raised in some quarters.

It must be said that only the king can do so.

Although he has to act on the advice, government there are good reasons to argue that the general provision under Article 40(1) of the Federal Constitution admits exceptions: advice must be constitutional and that it does not have the implication that run counter to the notions of democracy and constitutionalism which stand at the very heart of the constitution.

Copyright © 1999-2007 Mkini Dotcom Sdn. Bhd.
Source : <http://www.malaysiakini.com/news/89960>