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A prime minister's powers

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THE news of the prime minister having removed the attorney-general and deputy prime minister; promoting the Public Accounts Committee chairman; and transferring several Malaysian Anti-Corruption Commission (MACC) officers shocked many people. That so much power is concentrated in the hands of one man in the highest of positions is considered unbelievable.

The reality is that these systems have always been in place. The subversions of these institutions meant to be independent and free from political interference have long pre-dated the current administration, as well as that of the previous administration.

First, there is some dispute as to the constitutionality of Tan Sri Abdul Gani Patail's demotion as the attorney-general (AG). Before 1963, the Federal Constitution stipulated that the AG should be removed only by way of a tribunal (in the like manner as a Federal Court judge), but the constitution was later amended making it much easier to remove an AG.

It is arguable that he should have received the right to early notification and due process as a civil servant. But the long and short of it is that the prime minister does ultimately have the power to remove the AG if he so wishes, and this he did.

Second, by convention, the deputy prime minister has always been the elected deputy president of the largest party in the ruling coalition, in this case Umno. Tan Sri Muhyiddin Yassin is still the rightfully elected deputy president (a special general assembly would have to be called to change

this, with two-thirds of party delegates), and ought to therefore occupy the position of deputy prime minister.

This is the first time in Malaysia's recent history that the deputy president is not also the deputy prime minister - in 1998, Datuk Seri Anwar Ibrahim was sacked as the deputy president when removed as deputy prime minister. Because this practice is merely by convention and is not legally enshrined, the prime minister therefore does have the power to break such a practice.

Third, the Public Accounts Committee (PAC), which is a bi-partisan parliamentary select committee monitoring body, is made up of backbenchers to ensure there is no conflict of interest, that is, members of Parliament who are not members of the executive.

The resignation of Datuk Nur Jazlan Mohamed as chairman of the PAC was necessitated out of the prime minister's Cabinet reshuffle as he was appointed deputy home minister. Again, there was nothing illegal about this since for all intents and purposes, he was in fact given a promotion.

If anything is to be disputed, it is that the PAC has not been allowed to continue its investigations, since in the absence of the chairman, the vice-chairman ought to take over. Parliament Speaker Tan Sri Pandikar Amin ordered a freeze on the probe on a technicality - that this provision "cannot be used when the post is vacated". The speaker is elected by members of Parliament by a simple majority, which effectively means whoever is proposed by the leader of the ruling party would be voted in.

Finally, the two officers being transferred out of the MACC into the Prime Minister's Department (a decision which has since been reversed) is very much the prerogative of the prime minister.

The MACC reports to the Prime Minister's Office and is therefore not an independent entity, which is a legacy of its past. First set up as the Anti-Corruption Agency under the Home Ministry, it later changed its name to the MACC by way of an Act that also strengthened its ability to conduct more far-reaching investigations.

Not having its own service commission means that MACC officers are hired from the same pool of civil servants that all other government bodies draw from, namely the Public Services Commission. As such, the power to hire and fire lies at the discretion of the executive, the head of which is the prime minister. As long as the MACC remains parked under the Prime Minister's Office, it will always be subservient to political demands. The chief commissioner's position is not secure either.

The prime minister in Malaysia is a master chess player because his position allows him the freedom and power to do so, shifting around pawns on the board. This is an institutional problem that Malaysians should recognise as having long been established - it is not something new and this did not happen overnight. It is a system that is dependent upon the benevolence of the leader at hand - if a good person occupies the prime minister's position, he would do what is morally right.

Are there solutions to reverse this institutional failure? Of course there are, and civil society organisations have long clamoured to get these reforms into the public eye, with little success.

The way to ensure that such powers are not blatantly abused is to reduce the stronghold of the prime minister and the executive over such institutions.

The MACC should no longer report to the Prime Minister's Office but to Parliament. It should have a constitutional mandate to

ensure its independence, ability to hire and fire its own officers and whose chief has security of tenure. A governing Anti-Corruption Commission should be kept separate and distinct from the operating, investigating agency.

The issue of the attorney-general's removal has to be seen in the context of more urgent reforms, namely to separate the role of the AG as having sole discretion to determine whether or not to prosecute someone for a criminal charge, and that of the public prosecutor, the latter of which should be given to an independent body altogether. Whether the AG is a professional (meaning drawn from the civil service) or a political appointment is a debatable point. Some lawyers have argued that the head of prosecution should be professional, whereas the AG should be political, thereby answering to Parliament.

The PAC - along with all other parliamentary select committees - should be given the independence to carry out its tasks; why should the executive interfere with a parliamentary body at all? In other Commonwealth countries, such select committees are allowed to operate freely.

However, since it is the majority party that controls Parliament, it is imperative that those occupying those positions - especially at the highest levels - practise integrity and act in public interest as they are answerable to the voters who put them there in the first place.

Ultimately, it is institutional reforms that will provide the safeguards and mechanisms to mitigate for the risks of inconsistent leadership.

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