



# PARLIAMENT AS THE GRAND INQUEST OF THE NATION: PROPOSALS FOR ENHANCING PARLIAMENT'S INSTITUTIONAL EFFICACY

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# INTRODUCTION

It is not reliable to measure the depth of the sea at low tide. Perhaps this analogy is relevant to our Parliament that has been in abeyance for the last six months except for a few hours on 18<sup>th</sup> May. Parliament has also largely been a bystander to the devastating health and economic crisis and the political instability engulfing our beloved land.

This bystander's role is NOT what our Constitution envisaged.

Forty-nine Articles of the Constitution (out of a total of 183) deal with the composition, qualification, legislative powers, financial powers, privileges and procedures of our Parliament (Articles 44-68, 73-79 and 96-112).

- ▶ The electoral process for choosing representatives to the Dewan Rakyat is covered by Articles 113-120 and the Thirteenth Schedule.
- ▶ Elections to Parliament and to the Legislative Assemblies of the States incur a massive investment: RM 500 million in 2018 and an estimated RM 750 million for the next electoral exercise due to the reduction of voting age to 18 and the substantial increase in the number of voters.

# CONSTITUTIONAL FUNCTIONS

In our “Westminster system” of “parliamentary government”, the Constitution reposes in our federal legislature the following constitutional functions:

1. The legislative function of enacting, amending and repealing of laws. This should include the scrutiny of subsidiary legislation and a leadership role in law reform.
2. Oversight of executive policy and performance to ensure accountability, answerability and responsibility of the political executive to Parliament.

3. Control over national finance. This includes:
- (i) oversight of financial policy
  - (ii) examination of the use of financial resources optimally
  - (iii) allocation of the annual budget, and
  - (iv) review of the reports of the Auditor-General to examine how the allocations were utilised.

4. The “constituency function” of improving the well-being of citizens by redressing constituents’ grievances and engaging with them to obtain feedback on government policies and programmes.

5. The giving of democratic legitimacy to the government in power.

6. Representing the wishes of the electorate in the Dewan Rakyat.
7. Scrutinising the Yang di-Pertuan Agong's Emergency Proclamations and Emergency Ordinances during an emergency.
8. Approving or rejecting the Election Commission's proposals for new electoral boundaries.
9. Safeguarding Malay Reserve Lands.



10. Exercising parliamentary privileges to protect the House, its members and officers and to ensure compliance with its decisions and orders.

11. The Dewan Negara has the additional function of representing the 13 States and the Federal Territories and giving voice to minorities and marginalised groups.

- ▶ It is regrettable to note that except for the “constituency function”, Parliament of Malaysia fails to perform its other duties satisfactorily.
- ▶ Theory versus reality must be studied and reforms must be proposed to enhance the institutional efficacy of our premier legislative institution.



# THE MAKING OF LAWS

# 1.1 THE POLITICAL REALITY

- ▶ The political executive dominates the legislative agenda. It drafts the Bills, embargos them under the OSA, determines the timing when the Bill will be introduced, and uses its “party whips” to bulldoze legislative proposals without much scrutiny. Sometimes a Bill is passed on the very day it was introduced. In a 1992 study covering four years, I found that 79% of Bills are passed without a comma or full-stop being altered; 15% are amended; 5% are withdrawn due to criticisms on the floor.

- ▶ Under Standing Order 49, Private MPs are allowed to propose Private Member's Bills. Though many Private Bills have been introduced over the last six decades, none has ever crossed the threshold to become a law.

- ▶ Before Bills are laid down for their First Reading, they are embargoed under the Official Secrets Act 1972.
- ▶ Even after the Bills have been laid for First Reading, there is no regular tradition of engaging stakeholders to discuss the content of Bills at committee stage. This is despite Standing Orders of the Houses permitting the establishment of Legislation Committees. Such committees have been appointed only about 10 times in 61 years!

- ▶ There is no parliamentary committee to vet or scrutinise subsidiary legislation.
- ▶ Parliament plays no part in proposals for law reform. Neither is there an independent Law Reform Commission to report to Parliament.
- ▶ It is clear that the centre of gravity of the legislative process has unconstitutionally shifted from the legislative branch to the executive branch. All in all, Parliament legitimates; it does not legislate.

## 1.2 PROPOSED REFORMS

- ▶ **Policy papers:** To enable MPs to be better informed and to enable citizens and affected interests to work with MPs, the Government must issue policy papers on proposed Bills to enable citizens to provide feedback and contribute to the discourse.
- ▶ Decisions in which people participate are decisions they are likely to respect.



- ▶ **Lifting the secrecy surrounding Bills:** Copies of Bills should not be embargoed and covered by the Official Secrets Act 1972.
- ▶ **Giving MPs time to read Bills:** Draft copies of Bills must be supplied to all MPs at least two weeks before the first reading to enable them to study the provisions and seek independent advice.

- ▶ **Legislation committees:** Bipartisan parliamentary committees to examine Bills before or after the second reading must be appointed as is permitted by the Standing Orders of Parliament. (Standing Order 54(1) of the Dewan Rakyat and Standing Order 53(1) of the Dewan Negara).
- ▶ In its scrutiny of the Bills, the committees are allowed to invite experts, relevant NGOs, stakeholders and members of the public to comment on the Bills.
- ▶ **Post-enactment review:** It is humbly proposed that every Bill must contain a clause mandating the appointment of a Committee to review legislation in the post-enactment period and to report to the Minister concerned.

- ▶ **Private MPs' Bills:** Private Members' Bills and Private Senators' Bills are allowed by Standing Orders (SO 54(1) of the Dewan Rakyat and SO 53(1) of the Dewan Negara.
- ▶ Private Member's Bills should be encouraged as these may involve participation by NGOs and reflect the democratic impulses of society.
- ▶ The Speaker's Office should draw lots and those MPs whose names appear on the top three slots should be given time and financial aid (as in some democracies) to submit their legislative proposals to the House.

- ▶ **COVID-19:** The pandemic that is sweeping the world requires a wide-ranging Covid-19 (Special Measures) Act 2020 to protect businesses, workers, borrowers of loans, contractors and suppliers.
- ▶ Despite the desirability of social distancing, the following four techniques can be adopted to continue with the legislative work of Parliament:
- ▶ 1. Parliament can meet online.

2. Quorum in the DR is 26 (S.O. 13). The quorum rule can be employed to reduce the number of MPs attending the House. With bipartisan cooperation, the government and the opposition can agree to send 30 MPs each (in a House of 222 MPs) to allow the business to proceed and social distancing to be observed.

3. Committees can continue to meet “upstairs” to vet legislation.

4. Most Acts of Parliament permit subsidiary legislation to be framed by the executive outside of Parliament. This technique has indeed been employed to meet some needs. However, its main limitation is that subsidiary legislation must be made under a parent statute and not contrary to it. In some cases amendments to parent laws are called for to combat the covid-19 emergency.

- ▶ **Scrutiny of subsidiary legislation:** Subsidiary legislation outnumbered Parliamentary legislation by a ratio of 1:20 or more. Yet it goes unscrutinised.
- ▶ A Joint Committee of both Houses on Subsidiary Legislation must be appointed to advise Parliament on whether to accept or annul a subsidiary law. All subsidiary legislation must be laid before this Joint Committee and this Joint Committee should have the power to submit a report to Parliament on whether to accept or annul the subsidiary legislation.

- ▶ **Increasing the number of parliamentary sittings:** The Malaysian Parliament meets for about 50 -75 days in one year. In 2020, it has met only one day in the first six months! It is slotted to meet again in July-August and November-December this year.
- ▶ In contrast, the British Parliament meets approximately 180 days in a year.
- ▶ Increase in the number of parliamentary sittings will allow more time to be spent on legislative and other business of the House.



- ▶ **Committee work:** The Malaysian tradition is that when the House prorogues, committee work ceases. It is proposed that despite an adjournment or prorogation of Parliament, committee work must continue all year round. No specific law forbids our paid MPs from such service to the nation.
- ▶ It is noteworthy that many Special Select Committees established by Parliament have a tenure of 2 years and are not dissolved upon prorogation.

- ▶ **Dewan Negara:** To lighten the legislative load of the Dewan Rakyat and to enable greater scrutiny of legislative proposals, some politically non-controversial, non-money Bills should originate in the Dewan Negara. This will require both Houses to sit concurrently. No law forbids concurrent sessions.

- ▶ **Legislative assistants:** As in most democracies, including those in Asia, MPs must be supplied with research staff to assist them to perform their parliamentary work. This proposal has significant financial implications. In the short range, Parliament can work with universities to recruit volunteer students and staff to assist Parliament.
- ▶ **Law reform:** The two Houses should set up a Joint Select Committee on Law Reform.

- ▶ **Law Reform Commission:** An independent Law Reform Commission should be appointed by legislation to systematically review the laws of Malaysia and to make independent recommendations for the purposes of improving, modernising and reforming the law. The Commission should report to the Joint Select Committee on Law Reform to ensure that the elected representatives have a say in keeping the law responsive to the felt necessities of the times.

## 1.3 LEGAL AND FINANCIAL IMPLICATIONS

- ▶ Most of the above recommendations require no amendment to the Constitution and no enactment of any law. Administrative practices, constitutional conventions and utilisation of existing Standing Orders of each House will suffice to achieve the reforms.
- ▶ However, lifting the embargo on Bills before the first reading may require amendment to Standing Order 95A of the Dewan Rakyat. Supplying the draft copies of the Bills to MPs at least two weeks before the first reading may require amendments to Standing Order 48 of the Dewan Rakyat and Standing Order 47 of the Dewan Negara.

- ▶ To facilitate parliamentary committees to review legislation post-enactment, every new federal Bill must contain provisions appointing such committees.
- ▶ Hiring legislative assistants will have financial implications.
- ▶ Setting up an independent Law Reform Commission will require a new Law Reform Commission Act.

# OVERSIGHT OF THE EXECUTIVE



## 2.1 THE POLITICAL REALITY

- ▶ In our system of “responsible government,” the political executive is part of Parliament and is required to answer questions, supply information and justify policies during question time and on debates on motions. In extreme circumstances the Dewan Rakyat can dismiss the government on a vote of no-confidence. The political reality is, however, quite different.



- ▶ Question time is often a ritual exercise in evasion.
- ▶ Due to time constraint, not all questions listed on the Order Paper are answered.
- ▶ The precedence of questions on the Order Paper frequently arouses the suspicion that controversial questions are deliberately placed towards the end of the Order Paper.
- ▶ Till GE-14 the Prime Minister was not required to subject himself to questions from the House and to examination from the Opposition Leader. A weekly Prime Minister Question-Time must be a regular feature of parliamentary proceedings.

## 2.2 PROPOSED REFORMS

- ▶ **Questions on the daily Order Paper:** To strengthen Parliament's oversight function, procedures need to be developed to determine the order of questions to allay the suspicion that controversial questions are deliberately placed towards the end of the daily Order Paper.
- ▶ In the United Kingdom, the order in which the questions are asked is determined by the 'shuffle', carried out randomly by a computer. In New Zealand, questions are arranged proportional to party membership.

- ▶ **Written replies:** If questions are not reached, there should be written replies to these questions within a specified time limit.
- ▶ **Prime Minister's time:** Once a week the PM must be required to face the House for at least half an hour. During this time, the Opposition Leader should have a guaranteed time to speak and engage with the PM.

- ▶ **Departmental Committees:** In the long range, each ministry should have a counterpart Departmental Parliamentary Committees to evaluate the performance of the ministry. As a beginning, Parliamentary Committees after GE14 were made responsible for a cluster of Ministries or Departments.

- ▶ **Scrutiny of executive appointments:** A Special Standing Committee on Executive Appointments must be created to scrutinise the PM's nominees for all key administrative, financial and commercial institutions.
- ▶ Alternatively, a Special Commission on Executive Appointments must be established to vet the nominees and to ensure that only those with ability and integrity are appointed. The Judicial Appointments Commission supplies a model.

- ▶ **Power to punish for contempt:** Parliament should use its power to punish for contempt any Ministers, civil servants or citizens who defy a parliamentary order to appear before committees and to supply information. The discourtesy to Parliament of senior civil servants sending their junior colleagues to appear before parliamentary committees must be censored. In Australia, a Minister has been cited for contempt for refusing to supply documents to a parliamentary committee
- ▶ Courts cannot interfere. The exercise of parliamentary privileges is immune from judicial interference on the principle of separation of powers.

- ▶ **Motion of no-confidence:** A motion of no-confidence is implied in Article 43(4) of the Federal Constitution. However, the Standing Orders of the Dewan Rakyat do not specifically provide for such a motion.
- ▶ While it is possible to introduce the motion through ordinary rules (S.O. 26-27), the Standing Orders should be amended to prevent a repetition of the precedent after GE13 of the motion of no-confidence being blocked by the then Speaker.

- ▶ **Opposition business:** Opposition business must be allocated special time at least one hour a week.
- ▶ **Broadcast:** Subject to the power of the Speaker to expunge un-parliamentary or inflammatory words and speeches, all parliamentary proceedings must be broadcast to enable the people to know what is happening in their august, elected assembly. At the moment only selected portions of the proceedings are put on air.



- ▶ **Senators:** Malaysia should activate Articles 45(4)(a) and (b) of the Federal Constitution to enable Parliament by law to (i) increase the number of Senators elected in each State to three and (ii) to provide for direct vote of the Senators by the electors in that State.
- ▶ Conventions should be developed to allow professional bodies, trade associations, minority groups and cultural bodies to nominate persons to be appointed as Senators. Political patronage and not the aims of the Constitution play a dominant role in the appointment of 44 Senators under Article 45(2).

- ▶ **Shadow Cabinet:** The largest party or coalition that does not form the Government should be given recognition as the Official Opposition and it should put forward its Shadow Cabinet. Specific time should be allocated to the corresponding Shadow Cabinet Ministers to question relevant Government Cabinet Ministers. Some allowances must be considered for Shadow Cabinet Ministers.

## 2.3 LEGAL AND FINANCIAL IMPLICATIONS

- ▶ Most of the above proposals require no amendments to the laws. The Standing Orders can be internally amended to provide for the above proposals. Resolutions of the Houses can be moved and constitutional conventions can be developed.
- ▶ However, setting up Departmental Committees, providing support staff to MPs and allowances for a Shadow Cabinet will have economic implications.



# SCRUTINY OF NATIONAL FINANCE

## 3.1 THE POLITICAL REALITY

- ▶ The Malaysian Parliament plays very little, if any, role in long term economic policy. Though we observe the formality of budget debates, the executive monopolises economic policies and determines how much tax is to be raised and how it is to be spent.
- ▶ In any case, the so-called Annual Budget is always followed by supplementary budgets which modify significantly the thrust of the main budget. Parliament merely legitimates.

- ▶ In the past disproportionately large allocations for the Prime Minister's Department (some allege it to be as much as 15% of the Budget) give to the PM much leeway to play out “cash is king” policies.
- ▶ The jurisdiction of the Public Accounts Committee is limited to those agencies audited by the Auditor-General.

- ▶ The Auditor-General has no oversight over “Off Budget Agencies” and “Non-Financial Institutions” which organise their own audit and are exempted from the scrutiny of the Auditor-General.
- ▶ The 1MDB scandal clearly illustrates how ineffective Parliament can be in checking executive malfeasance in the financial field.

## 3.2 PROPOSED REFORMS

- ▶ **A new committee of Financial Policy:** To strengthen Parliament's scrutiny, a Select Committee on Financial Policy and Expenditure must be set up to examine the thrust of government's monetary policies.
- ▶ **Public Accounts Committee:** The jurisdiction of the Public Accounts Committee ("PAC") must be extended to cover all institutions receiving or generating funds, whether a Ministry, a statutory body, a government-linked company, a syariah authority like JAKIM or an "off-budget agency".



- ▶ **Opposition member to head the PAC:** As in the United Kingdom, a member of the Opposition must chair the PAC. This reform has been accomplished.
- ▶ **Auditor-General:** To extend Parliament's scrutiny over all national income and expenditure, the administrative practice of declaring some institutions as "off-budget" or "Non-Financial Institutions" must cease. That will subject these institutions to audit by the Auditor General and scrutiny by the Public Accounts Committee.
- ▶ **Inapplicability of the OSA:** No audit reports should be withheld from Parliament under the Official Secrets Act 1972. The OSA does not apply to parliamentary proceedings.

## 3.3 LEGAL AND FINANCIAL IMPLICATIONS

- ▶ The establishment of the Select Committee on Financial Policy and Expenditure and the recruitment of specialists into the Committee to advise MPs will have some financial implications.

# CONSTITUENCY FUNCTION



# 4.1 THE POLITICAL REALITY

- ▶ Most MPs return to their constituencies often to remain in touch with the pulse beats of their constituents. The Malaysian MP compares favourably with MPs in many other countries.
- ▶ Individual MPs run Service Centres. However, MPs, especially opposition MPs, are hampered in their constituency function because of lack of funds, lack of office space in Parliament and lack of legislative assistants. These needs should be met. In the BN government after GE13, BN MPs were allocated a constituency fund but such a fund was denied to opposition MPs. This was a clear violation of the equality clause of the Constitution.

- ▶ MPs can rely on the reports of the Public Complaints Bureau (“PCB”) though most do not. The PCB is a branch of the Prime Minister’s Department. The PCB is led by a Director-General who reports to the Permanent Committee on Public Complaints, which is in turn chaired by the Chief Secretary of the Government. There is a lack of structural independence when the executive reports to the executive.

## 4.2 PROPOSED REFORMS

- ▶ **Select committee:** Parliament must set up a Special Select Committee on Public Grievances to scrutinise complaints from the public.
- ▶ **Creation of an Ombudsman:** The existing Public Complaints Bureau should be replaced by an independent ombudsman to investigate maladministration by the executive. Following the New Zealand model, the ombudsman may be appointed by the Yang Di-Pertuan Agong on the recommendation of Dewan Rakyat. The ombudsman should be empowered to initiate investigations at his own initiative or on a complaint, or on reference from a parliamentary committee or the Prime Minister.

- ▶ The ombudsman may first report a maladministration and make recommendations to the relevant department or Ministry. Thereafter, the relevant department or Ministry may be required by the ombudsman to notify it of the steps which will be taken to implement the recommendations made. The relevant department or Ministry may also be required to publish the report.

- ▶ At the same time, if there is substantial evidence of any significant breach of duty or misconduct, the ombudsman may also report the matter to the appropriate authority. If the necessary steps are not taken within the specified time, the ombudsman can send a copy of the report and recommendations to Parliament. The ombudsman should report to a Select Parliamentary Committee.



- ▶ **Federal-state relations:** Delicate issues about federal-state division of powers will have to be considered. A federal ombudsman has no right to demand access to information on matters which are in the State List.
- ▶ **Financial aid for Service Centres:** Each MP should be given financial assistance to set up a Service Centre in his constituency. The allocation to all MPs must be equal in line with Article 8's rule of equality before the law.
- ▶ **Staff:** Service Centres will need support-staff.

## 4.3 LEGAL AND FINANCIAL IMPLICATIONS

- ▶ Legislation is needed to secure the powers of the Ombudsman.
- ▶ A Parliamentary Committee on the Ombudsman must be set up to receive reports from the Ombudsman.
- ▶ Monetary aid for Service Centres has obvious financial implications.
- ▶ Rules of ethics will have to be evolved to subject MPs to transparent and proper use of funds allocated.



# OTHER REFORMS

# AN IMPROVED COMMITTEE SYSTEM

- ▶ In developed democracies, the key to Parliament's institutional efficacy lies in a strong committee system. Many of the functions of Parliament, especially the making of laws, the control of national expenditure, and the holding of the executive to account, can be greatly assisted by the working of the committee system.
- ▶ Regrettably, the committee system in Malaysia is underdeveloped. However, the good news is that this reform can be accomplished without changing any laws.

In fact, between 2018 and 2019, several new Committees were established: Consideration of Bills Committee, Budget Committee, Rights and Gender Equality Committee, Major Public Appointments Committee, Defence and Home Affairs Committee, Federal-State Relations Committee, Human Rights and Constitutional Affairs, Innovation and Environment, Elections and International Relations and Trade.

These new committees joined the 5 existing Public Accounts Committee, Standing Orders, House Committee, Privileges Committee and the Committee on Selection.

Ideally each of the 222 MPs should sit on at least one committee. MPs should be allowed to choose and volunteer for committees of their choice.

- ▶ All committees should be bipartisan.
- ▶ The PAC must be Chaired by the Opposition. This reform was accomplished in 2018 and should be continued.
- ▶ Chairpersons of other committees should be selected by the committee members through secret ballot. Hopefully, some Chairs will be occupied by members of the Opposition.

- ▶ The committees must be assisted by experts and empowered to hold public hearings.
- ▶ The committees should invoke their privilege to compel Ministers and civil servants to appear before committees.
- ▶ Committees should meet even if Parliament is under adjournment or prorogation.



# STRENGTHENING SEPARATION OF POWERS

Some provisions of the Constitution secure, others weaken, the independence of the legislature from the executive.

1. The life of the elected House is fixed by the Constitution at 5 years: Art 55(3). Unfortunately, the PM has the power to advise the King to prematurely dissolve the House. The safeguard in the Constitution is that the King has a discretion to refuse: Art 40(2)(b). In the UK, a reform has been made to provide for a fixed term Parliament.

2. The PM has the power to advise the YDPA on the summoning and prorogation of parliament: Art 55. The Constitutional safeguard is that no more than 6 months must elapse between the last sitting in one session and the first meeting in the next session. Unfortunately, this permits the political executive to keep the legislature in prorogation for extended periods of time. In the UK, the courts can review the PM's advice to the Queen if the purpose of prorogation was to prevent Parliament from exercising its constitutional functions.

3. The first sitting of the House in each session is proclaimed by the King (acting on advice) but the dates for subsequent meetings are as determined by the PM (S.O.11(2)). That is why Parliament met for only half a day on 18 May and then was prorogued to accommodate the PM's wish.

4. The daily agenda and business of the House allows the government to determine and dominate the proceedings:  
S.O. 14. Government business has precedence over Private Members' business: S.O.15.

5. The Speaker of the DR and the President of the Senate are elected by their Houses and not appointed by the executive: Articles 56-57.

6. Our Constitution allows a non-parliamentarian to be elected as Speaker. It is recommended that if the Speaker belongs to a political party, he/she should retire from party membership once elected to the post. The British convention should be emulated that if at the next general election, the Speaker wishes to contest his MP's seat, he should be elected as an MP unopposed. One of the Deputy Speakers should be from among the members of the Opposition.

7. Under Art 65, the Secretary (Clerk) to the House belongs to the general public service of the Federation and is transferable to another public service. This is unfortunate and must be amended.

8. Parliament should have the power to hire its own staff under a re-enacted Parliamentary Services Act. Such a law is needed to enable Parliament to recruit staff for its committees and (in the long range) for its *MPs*.

9. In the Dewan Rakyat all MPs are elected. There are no reserved seats for the army, the police or executive appointees.

Unfortunately in the Dewan Negara appointed Senators are in a majority. The ratio of appointed to indirectly elected Senators is 44:26 today. The ratio was 16:22 in 1959.

10. Each House of Parliament enjoys many privileges and immunities e.g. proceedings in Parliament cannot be challenged in a court: Art 63.

Unfortunately since 1970, the Seditious Act applies fully to parliamentary proceedings. This requires re-thinking. MPs should have freedom to debate. However, prior notice of such debates could be given so that Mr Speaker can clear the galleries of outsiders and members of the press.

11. The remuneration of MPs and Senators is provided for by law and neither the executive nor Parliament can interfere. MPs cannot hold an office of profit in the public services.

Unfortunately, there is no bar to the PM's power of patronage to appoint MPs to hold office in statutory bodies, corporations and GLCs.



# A FREEDOM OF INFORMATION ACT

Parliament must pass a Freedom of Information Act to enable transparency in Government, to protect whistleblowers and to make it difficult to sweep corruption and abuse of power under the carpet. The federal Whistleblowers Protection Act 2010 is significant but criticised because it does not permit disclosure to outsiders.

# CODE OF CONDUCT

Like all professional bodies, Parliament must have its own detailed Code of Conduct to be enforced by the Committee of Privileges. The existing Standing Orders provide a good beginning point though more rules need to be developed to cover conflict of interest situations. In the United Kingdom, each House maintains a Register of MPs' Private Interests that is open to public scrutiny. Parliament must vigorously impose its Declaration of Assets requirement on MPs. This requirement was proposed in 2019 but not enforced.

# INSTITUTE OF PARLIAMENTARY AFFAIRS

An Institute of Parliamentary Affairs on the lines of ILKAP and INTAN should be established to train MPs in the Constitution and laws of Parliament. This will have financial implications. The cost can be reduced by teaming up with a university or with an institution like ISIS Malaysia.

# FULL-TIME JOB

- ▶ The work of MPs should be a full-time job to ease the pressure on parliamentary time. The arrangement of parliamentary sittings to enable MPs to pursue outside business and vocations conflicts with the idea of a modern and effective Parliament. A part-time federal Parliament, sitting for 50-75 days a year cannot possibly cope with an executive branch that works overtime throughout the year.

# FIXED TERM PARLIAMENT

- ▶ As in modern England, the PM's power to recommend dissolution of Parliament prematurely must be replaced by a fixed term Parliament subject to two exceptions:
- ▶ (i) there is a successful vote of no-confidence or
- ▶ (ii) a two-thirds majority on the floor requests early election.

# PARTY-HOPPING

- ▶ Anti-hopping law should be enacted to discourage party-hopping. In India, MPs who defect from their party have to return to the people at a by-election to renew their popular mandate.
- ▶ In view of the judicial decision in *Nordin Salleh* (1992) this reform will require amendments to Article 10(1)(c) of the Federal Constitution.

# REFORM OF THE SENATE

- ▶ Article 45(4) provides that Parliament may by law
- ▶ (i) increase from two to three the number of members elected for each State,
- ▶ (ii) provide for direct vote of the electors, and
- ▶ (iii) abolish or decrease the number of appointed members. No constitutional amendment is needed to bring this reform. Ordinary legislation under Article 45(4) will be sufficient. It is proposed that the direct election of Senators be on the proportional representation system as opposed to the first past the post system.

# CARETAKER GOVERNMENT

- ▶ To promote fair and free elections, a remarkable (but now repealed) innovation from Bangladesh deserves our consideration. During a dissolution pending a general election, the PM must resign and the King must appoint an impartial, retired or serving luminary to lead the country during the electoral contest. Article 43(2) which permits the appointment of a new, interim Prime Minister from the previous Dewan Rakyat during a dissolution will have to be amended. Rules must be evolved to determine the limited, caretaker, “night-watchman role” of a caretaker Prime Minister.



# CONCLUSION

With these reforms, the legitimacy and institutional efficacy of Parliament may be enhanced and Parliament may be able to act as a check and balance against the omnipotent executive.

- ▶ This is despite the undemocratic trend world-wide that representative legislatures have become less reflective of popular opinion because of the growing role of money in politics.
- ▶ Legislatures have also lost influence to bureaucratic agencies, central banks, free trade and international institutions.

By itself no reform can roll back the tide of authoritarian government.

But put together, these reforms may collectively constitute a torrent of pressure that may restore some pride to our representative institution and restore the constitutional scheme of things.