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# Rencana Pilihan



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**reflecting on the law** Shad Saleem Faruqi

newsdesk@thestar.com.my

Shad Faruqi is Emeritus Professor of Law at UiTM. The views expressed are entirely the writer's own. He wishes all Malaysians the blessings of Ramadan and the approaching Eid.

## A precedent but no blanket pass

FOR the first time in the history of our Constitution, a Bill became law without the consent of the Yang di-Pertuan Agong. This was when the National Security Council Act 2016 (NSC Act), passed by the two Houses last December, was gazetted on June 7 without royal assent.

This draws attention to the complex constitutional procedures for enacting laws and specifically to Article 66 (4A), which permits the Government to bypass the King.

**Bypassing the King:** Under Article, 44 Parliament consists of the Yang di-Pertuan Agong, Dewan Rakyat and Dewan Negara. In normal circumstances, royal assent is needed for a Bill to become law.

However, in the event that the Yang di-Pertuan Agong refuses or delays assent, Article 66 (4A) provides that the Bill shall become law 30 days after it is presented to the King.

**Chequered history:** The Merdeka Constitution imposed no time limit for signifying royal assent but in August 1983, a Constitution Amendment Bill sought to insert a new Clause to provide that "if for any reason whatsoever the Bill is not assented to within 15 days of the Bill being presented to the Yang di-Pertuan Agong, he shall be deemed to have assented to the Bill and the Bill shall accordingly become law".

The Constitution (Amendment) Act 1983 applied this 15-day time limit to State Rulers as well. The Conference of Rulers, acting under Article 38 (4) and 159 (5), vetoed this Bill. A constitutional crisis ensued. After four months of negotiations, a compromise was worked out between the Government and the

After four months of negotiations, a compromise was worked out between the Government and the royal houses.

The Constitution (Amendment) Act 1984 provided a multi-tiered procedure for enabling the King to object to a Bill but for the Government to ultimately bypass the King in the legislative process.

- The King was granted 30 days to consider a Bill that was presented to him.

- His Majesty was given a right to return the Bill to the House where it originated from with written reasons for his objections.

- If the Houses of Parliament re-enacted the Bill a second time, the Bill would be returned to His Majesty for royal assent.

- His Majesty could delay the Bill for a second 30-day period.

- If he still refused to give his assent, the Bill would be deemed to become law.

- The provision about bypassing State Rulers was abandoned.

For reasons unknown, the 1984 Amendment Act survived only 10 years. By the Constitution (Amendment) Act 1994, Article 66 was amended for a third time in 10 years. The provisions for the King to send his written objections to Parliament; for Parliament to re-enact the Bill; and for the King to have a second 30-day delay period were repealed. The bypassing procedures were extended to State Sultans.

The 1994 amendment to Article 66(4A) allows the King and the State Sultans only 30 days to give royal assent, after which the measure becomes law.

BERSAMBUNG  
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**Inapplicability of 66 (4A):** It is generally believed that the effect of Article 66 (4A) is that since 1994, the Government and the two Houses of Parliament can enact any Bill into law by gazetting it 30 days after presenting it to the King. This view is mistaken. Article 66 (4A) permits the King to be bypassed. But the Article cannot apply to other institutions and agencies that have a constitutional role in the nation's law-making process.

**Conference of Rulers:** The Conference is an essential component of the amending process in respect of those amendments specified in Article 159 (5). The Conference has been conferred the momentous power to block amendments to nine key provisions of the basic charter.

These provisions are: restrictions on free speech prohibiting the questioning of "sensitive issues" in Article 10 (4); citizenship rights in Part III; privileges, position, honours or dignities of the Rulers in Article 38; applicability of the law of sedition to legislative and parliamentary proceedings in Articles 63 and 72; precedence of Rulers in Article 70; Rulers' rights of succession in Article 71; special position of the Malay language in Article 152; privileges of the Malays and the natives of Sabah and Sarawak in Article 153; and the special procedure for amending the Constitution under Article 159 (5).

Any amending Bill that affects the above matters must be supported by a special two-thirds majority in both Houses and receive the consent of the Conference of Rulers. It is argued by some that as the NSC Act confers powers on the Prime Minister that are akin to the King's emergency powers under Article 150, the law requires the consent of the Conference under Articles 38

and 159 (5).

This submission is not supported by the case of Phang Chin Hock (1980). The Yang di-Pertuan Agong and the Rulers are distinct entities. The Rulers have no role in the declaration of emergency and so the NSC Act is not caught by Article 38.

**Governors of Sabah and Sarawak:** Under Article 161E, any modification to the special rights of Sabah and Sarawak requires a two-thirds majority in both Houses of the Federal Parliament, the assent of the Yang di-Pertuan Agong and the consent of the Governors of Sabah and Sarawak. Without the Governors' consent, the federal Bill cannot become law.

**Consent of the State legislatures:** Some federal Bills cannot become law unless assented to by the state legislatures concerned. Under Article 2 (b) a federal law altering the boundaries of any State shall not be passed without the consent of that state legislature and the Conference of Rulers. Laws under Articles 80 (3), 76 (3), 76 (4), 161 (3) and 161B (1) likewise need the state legislature's approval.

**Consent of State Sultans:** Does the 30-day rule apply to State Sultans? The Constitution (Amendment) Act 1994 (Act A885) meant this to be so.

But it is submitted that the federal amendments to Article 66 and the Eighth Schedule do not apply automatically to State Constitutions unless either of two conditions are met: first, that the States have amended their own Constitutions to incorporate the 30-day federal law.

Second, the federal Parliament has used the sledgehammer of Article 71(3) to pass a law to secure state compliance with the Federal Constitution.

Article 66 (4A) permits the King to be bypassed but cannot apply to other institutions and agencies with constitutional role in law-making.



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Naib Canselor

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Rosly Mahmud

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Nor Azlina Nordin  
Samsinah Selamat  
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