Reforming the Attorney General's Office in Malaysia: An Analysis of Article 145 and the Constitutional Framework of Prosecutorial Independence

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Abstract

This paper does a doctrinal analysis of Article 145 of the Federal Constitution of Malaysia with respect to the institutional structure and prosecutorial roles of the Attorney General's Office. It considers whether the existing constitutional system provides adequate protection for the independence of the prosecutor, in the context of the Attorney General as the main legal adviser to the Government and as Public Prosecutor. The study also questions the impact of the appointment system, where the Attorney General is commissioned by the Yang di-Pertuan Agong, based on the Prime Minister's advice, on how independent criminal prosecution is perceived, and what it actually is. The study also asks questions about the perceived and actual independence of criminal prosecution in Malaysia in light of the appointment system which appoints the Attorney General by the Yang di-Pertuan Agong on the advice of the Prime Minister. Applying the doctrinal legal research methodology, the paper examines the constitutional provisions, pertinent statutory provisions and Malaysian cases and applies comparative analysis as a supplement from the United Kingdom and Canada. These jurisdictions are chosen because they have a greater separation between governmental legal advisory roles and criminal prosecution. The findings indicate that there are concerns about the independence of the institutions and executive influence over the prosecutorial system in Malaysia, due to the structural design of Article 145 of the Constitution. The findings indicate that Malaysia's prosecutorial system operates within a constitutionally valid system, but concerns may arise on the grounds of executive influence and institutions independence in the country due to the structural design of Article 145 of the Constitution. The paper suggests that better clarity in the division of legal functions from prosecutorial discretion could improve the integrity and public trust in the criminal justice system. It

ends with a doctrinal roadmap to apply to the constitutional and institutional reform of the Attorney General's Office in Malaysia, which includes ideas for enhancing the prosecutorial independence in an environment that respects the rule of law, drawn from comparative jurisdictions.

Keywords: Article 145 Federal Constitution; Attorney General's Office Malaysia; Prosecutorial Independence; Constitutional Reform; Comparative Constitutional Law.

Introduction

The issue to separate the personel of Attorney General and Public Prosecutor always being discussed and debated in Malaysia's constitutional landscape. On top of that, this issue has remained a recurring subject of constitutional and political debate. Although we could say that the government should have done this long time ago, it could have been better to set aside all those political ideology and sit together to improve Malaysia's prosecutorial as well as judiciary system. Recently, this issue once again grap the attention of all Malaysian community in parallel with the rise of legal awareness Malaysian people had. To understand why this topic once again rise up, it is mandatory to understand what is Attorney General and it's powers first. To put it simply, Attorney General refers to chief legal officer of the state or country and legal advisor to chief executive or which we could address it as Prime Minister or President (*Attorney General |Britannica*, 2026). Apart from that, Cambridge dictionary also define the words 'Attorney General' as the top legal officer in the countries whose responsible in advising the government and the ruler pertaining to any legal matters (Cambridge Dictionary, 2026). Based on both definitions, we could barely seen that Attorney General is quite close with the political figure for example; Prime Minister and at the same time responsible to represent the public interest. Before we went straight to the problems, it is appropriate to observe the Attorney General's definition in Malaysia's context. The definitions, functions and powers of the Attorney General of Malaysia are all vested in Article 145 of the Federal Constitutions. According to Article 145(1) of the Federal Constitutions, Attorney General should act in accordance as the legal advisor and must advice the Yang di-pertuan Agong, Cabinet members and any minister pertaining to any legal matters which brought before him. Besides, whoever that was appointed as Attorney General, he must first be qualified to be a judge at the federal court (*The Attorney General – the Most Powerful Person in Malaysia? - the Malaysian Bar*, 2024).

The main concern here is not about all those provisions mentioned above although they might play certain roles in it, but the crucial part is the relation between the Attorney General and the public prosecutor who suppose to represent the public interest without any extrinsic influences. To understand the issue, it is obligatory to observe this two provisions which is Article 145(3) of the Federal Constitution and Section 376 of the Criminal Procedure Code. Article 145(3) of the Federal Constitution stated that Attorney General have the power to institute, conduct or discontinue any proceedings for an offense other than proceedings before the Syariah court, Native court and court of Martial. On the other hand, Section 376 of the Criminal Procedure Code explicitly stated that the Attorney

General shall also be the Public Prosecutor and shall have the authority on any prosecution under this code. With being said, if the entity that was appointed by the political figure have the powers and the authority on the body that was supposed to embrace the phrase “no one above the law” at the same time, it could negates the whole point of the body as the decisions might tend to lean on and match the preferences of that political figure (Lee, 2024). Therefore, the individuals that were placed under the shade of the dominant political circles could actually escape the prosecution and what is worst is, individuals that were classified as political threat could be targeted as ‘selective prosecution’.

Thus, the purpose of this writing is to examine the relevance of separating those both entity namely; Attorney General and Public Prosecutor as well as giving the good reasoning why this issue must be put to the end. Executive influence in prosecution and judiciary, whether it is obvious or through public perception has sufficiently strucked down people’s belief in our own system (Hector & Hector, 2025). By utilising doctrinal legal research methodologies and comparative approach with jurisdictions such as United Kingdom and Canada, this paper argues that reform warrants serious consideration in light of contemporary standards of prosecutorial independence.

Research Method

The research methodology applied in this study was pure doctrinal legal research methodology which is employed to explore the constitutional framework of Attorney General and prosecutorial independence in Malaysia. Since it is pure doctrinal, two jurisdictions was compared which is United Kingdom and Canada. Doctrinal research is suitable for this research since it concentrates on the analysis and interpretation of legal principles, constitutional provisions, statutory framework and judicial decisions systematically. The research aims to assess the current constitutional structure under Article 145 of the Federal Constitution in protecting the independence of the prosecutor and to determine if there is an institutional reform needed to boost public confidence in the administration of criminal justice.

This is mainly a comparative legal research design. The comparative approach is used to study the legal framework of the Attorney General and Public Prosecutor in Malaysia, namely Article 145 of the Federal Constitution and Section 376 of the Criminal Procedure Code. Comparative methods are also used to contrast prosecutorial models in selected commonwealth jurisdictions, specifically the United Kingdom and Canada. The jurisdictions that are chosen are those that have existing structures that afford a higher degree of institutional distance between the legal-advisory and prosecutive functions of government. The comparative analysis helps in identifying legal principles and institutional protection that could be applicable to the context of Malaysia.

Only secondary sources are used in the research. The key primary sources of law are the Federal Constitution, the Criminal Procedure Code, and judicial decisions regarding prosecutorial discretion and the Attorney General’s constitutional powers. Secondary legal materials include peer-reviewed journal articles, academic textbooks,

law commission reports, parliamentary materials and scholarly commentaries on constitutional law, prosecutorial independence, separation of powers and comparative prosecution systems. The sources used are academic and institutional, to guarantee the reliability and credibility of the research.

Comprehensive library-based and documentary research used for the data collection. Legal resources are researched and identified from university databases, legal resources, law reports, government resources, and academic journals. The materials gathered are then arranged by relevance to the research questions, including those that relate to the role of the Attorney General, prosecutorial discretion, influence of the Executive on the judiciary, and institutional independence.

The data are analysed using doctrinal legal analysis and comparative legal analysis. The doctrinal approach involves interpreting the constitutional provisions, statutory provisions and judicial precedents to determine the legal principles that should govern the exercise of prosecutorial powers in Malaysia. The comparative analysis then compares similarities and differences between the Malaysian framework and selected samples of Commonwealth jurisdictions. The study examines the extent to which the current constitutional setting meets the need for prosecutorial independence and possible areas for legal and institutional reform. The conclusions are based upon the analysis of legal arguments, critical analysis of legal sources, and a comparison of current models of prosecution.

Results and Discussions

Constitutional and Legal Framework of Attorney General and Public Prosecutor

Generally, each authorities in Malaysia possess their very own source of power which allows them to act accordingly without overlapping or Ultra-vires with other independent bodies and empirically evident, Attorney General are not excluded to have its own. The source of law and legal framework of the Attorney General is very unique as it is all vested in Article 145 of the Federal Constitution that highlighted its powers, functions, qualifications and appointments. Unlike other bodies, the Attorney General derives his authority from the highest law of the land, while others only come through the legislative process. Apart from that, it is not appropriate to only focus on the constitution since other provisions also explicitly mentioned the power of the Attorney General. The presence of other sources aside from constitution would give the right image of how powerful is Attorney General. The other sources that could be examine in this issue is Section 376 of the Criminal Procedure Code which highlights the relation between Attorney General and Public Prosecutor (The Malaysian Insight, 2024).

The powers of the Attorney General of Malaysia started with Article 145(1) of the Federal Constitution which concern about its appointment. Under this clause, the only one who are qualified to appoint an Attorney General is the Yang di-pertuan Agong himself with the advice of the Prime Minister. Besides, under the said clause, it also mentioned about the qualification to be appointed as the Attorney General of Malaysia

which he must be also qualified to be the judge of the Federal Court (Hector & Hector, 2025). This clause is the very beginning of one of the most influential and powerful individual throughout the entire nation when it comes to legal field. The label of 'powerful individual' was not made on whim but it comes with a very good reasoning.

On the other hand, Article 145(2) of the constitution further stated regarding the role and function of the Attorney General. According to this clause, it is said that Attorney General are bound to advice the Yang di-pertuan Agong or the Cabinet or any minister pertaining to such any legal matters conferred to him (The Malaysian Insight, 2024). Apart from being the legal advisor for the Yang di-pertuan Agong and the government of the day, Attorney General are bound to carry out his duty as the reprentative of the government in domestic civil matters, giving advises on the legality of proposed legislation and executive action, and serves as the government's representative in international legal proceedings (J J Chan, 2026).

If the constitutional framework of the Attorney General only involve clause (1) and (2), it might not be a problem and would never be a debate. However, the existence of Article 145 (3) of the Federal Constitution spike the curiosity about the powers of the Attorney General and it makes provisions that were originally without any problems, such as clauses (1) and (2), also become a topic of discussion due to the existence of clause (3). Therefore, Article 145(3) is the central significance to this discussion and reformation. The laymen might be wondering, what is Article 145(3) of the Federal Constitution all about? The said provision highlights the absolute power of the Attorney General which other entities or bodies did not possess it. The provision states that 'The Attorney General shall have power, exercisable at his discretion, to institute, conduct or discontinue any proceedings for an offence, other than proceedings before a Syariah court, a native court or a court-martial' (The Malaysian Insight, 2024). This provision confers three distinct powers; the power to institute proceedings (to initiate charges), the power to conduct proceedings (to manage and prosecute cases through trial), and the power to discontinue proceedings (to withdraw charges or enter a nolle prosequi) (Sahain Nada Puthucheary, 2022). Each power is vested personally in the Attorney General and is described as exercisable at his discretion.

This discretion of Attorney General was further elaborated in the case of ***Datuk Mohd Zaid bin Ibrahim v Peguam Negara Malaysia [2017] 9 MLJ 502*** where in this case, the court concluded that the decision of the Attorney General to not prosecute someone under the Article 145(3) of the Federal Constitution is an absolute right of the Public Prosecutor and it cannot be challenged and subjected to judicial review. The discretion that the Attorney General possess is too powerful to the extent that even the judiciary cannot compel the Attorney General to institute or drop the charges (The Malaysian Insight, 2020). This can be clarify by observing what was held in the case of ***Long bin Samat & Ors v Public Prosecutor [1974] 2 MLJ 152***. In this case, Lord President Tun Mohamed Suffian declared that the AG's control and direction of criminal prosecutions is extremely wide and unfettered. The AG's decision to drop charges, upgrade the charge or proceed to a trial is not binding upon the courts; the courts can require the AG to take a different course if they choose. However, recent developments

add that the Attorney General could still be inquired by the court if there is an abuse of power, irrelevant considerations and improper purpose (*The Public Prosecutor Is Accountable to the Public in Exercising His Prosecutorial Power - the Malaysian Bar*, 2016). Although there is a development in it, it still did not negates that the Attorney General discretion could not be compelled.

In these two cases, the orthodox view was created of prosecutorial discretion being wide, exclusive, and largely non-interference. This was reiterated in later cases such as ***Karpal Singh & Anor v Public Prosecutor [1991] 2 MLJ 544*** where the Supreme Court clarified that the discretion of the Attorney General under Article 145(3) of the Federal Constitution is an unfettered discretion and is not subject to challenge or substitution by the court's discretion (The Malaysian Insight, 2024).

The framework of the Attorney General was not mainly focus on the constitution itself as the presence of Section 376 of the Criminal Procedure Code is considerable vital to this discussion. What has been stated in the said provision could strengthen the objective of this paper why the office of the Attorney General need to be separated. Pursuant to Section 376 of the Criminal Procedure Code, it stated that the Attorney General at the same time shall be the Public Prosecutor and shall have power as well as discretion on any criminal prosecutions and proceedings under this code (*The Attorney General – the Most Powerful Person in Malaysia? - the Malaysian Bar*, 2024). This Act broadens the powers and functions of the Attorney General, which was originally only seen as an advisor to the YDPA and the government, but this provision on the other hand proves that his function is not just as an advisor but also acts as a public prosecutor with authority over any prosecution procedure.

The foregoing discussion shows that the powers of the Attorney General as contained in the Constitution and by the laws are very wide, much of it emanating from Article 145 of the Federal Constitution and Section 376 of the Criminal Procedure Code. These provisions place the Attorney General at the heart of the Government as its main legal adviser and make him the Public Prosecutor, transferring to the Attorney General many of the functions of the Public Prosecutor. The system is constitutionally sound, and established through the courts, but is also the subject of current deliberation over prosecutorial independence and institutional accountability. Therefore, the next section will review whether the current constitutional system provides sufficient protection for prosecutors' independence from de jure and de facto influence.

Constitutional Tensions in the Existing Frameworks

Upon examining all those provisions that have been underlined in previous sections, the tensions pertaining to this matter totally focusing on the roles of the Attorney General himself as the legal advisor and at the same time as the Public Prosecutor that supposed to hold the public trust and interest. However, is it possible to ensure the public trust while being appointed by the political figure? As legal awareness starts to grow among the community, they start to understand what is 'conflict of interest' and started to see this matter as a problem that needs changes and reformation.

To begin with, the Attorney General is an individual that was appointed by the Yang di-pertuan Agong on advice of the Prime Minister. Although on paper, it seems like the YDPA is the one who appointed the Attorney General, the decision on selections of the Attorney General is all on the Prime Minister whether someone is fit to hold such responsibilities or not. This is align with Article 40(1) and (1A) of the Federal Constitution which stated that the Yang di-pertuan Agong shall act and accept all the decision and advice made by the Prime Minister or any minister acting under the cabinet authority (Lim Wei Jiet, 2018). With that being said, the one who actually appointed the Attorney General is not the monarch which is well-known as political-independence, instead, the Attorney General was appointed by the political figure which is the Prime Minister. One question arose, is it accountable to let politically-appointed individual represent the public interest?

As the legal advisor for the federation according to the Article 145(2) of the Federal Constitution, the Attorney General is structurally aligned with the Executives. The function of advising the government necessarily requires a relationship of trust and cooperation with the Cabinet and individual Ministers where the Attorney General must understand government policy, anticipate legal risks in proposed executive action, and provide advice that serves the government's interests within the bounds of the law. Based on the framework, it could be said that the relationship between the Attorney General and the government is quite close. Not to mention that, the Attorney General get to hold the office at the pleasure of the YDPA essentially means his position is determined by the Prime Minister (Baharuddeen Abu Bakar, 2026). This also does bring another rationale why the Attorney General must aligned with the Executives.

It may be a wonder by the public, is it truly just or unjust to let someone who was influenced by the executive representing the public interest where the rule of no one above the law is embraced? This observation is not simply made on whim as there are actual controversial case involving the removal of the Attorney General. Generally, every decision that was made by the Attorney General to conduct any prosecution and proceedings must aligned with the executive and the Attorney General also cannot seems to prosecute the executive members. Again, the Attorney General hold his office at the pleasure of the YDPA essentially the executive. Therefore, the Attorney General cannot be expected to prosecute his boss or go against someone who determines your position (Baharuddeen Abu Bakar, 2026). Regarding the issue of against the will of the 'boss', the clarification could be found in the removal of Gani Patail who was a former Attorney

General during the reign of Datuk Seri Najib Razak as the Prime Minister. What is controversial is Gani Patail was forced to retire on the grounds of ill health while it is three months away from the compulsory retirement age. Connecting the dots, this was happened after Gani Patail was suspected to prepare a charge against Datuk Seri Najib Razak pertaining to 1MDB's case (Lee, 2024). This could be the clear example of 'go against the boss, and you are not at the pleasure to hold office anymore'. The problem is not about 'the person' but it is about restoring the public confidence. As laymen, they will only believe what they feel right no matter what the fact is, if the public find that it is wrong, the government should know that restoring the public confidence is the priority.

Comparative Analysis

After reviewing the constitutional structure of Attorney General and Public Prosecutors in Malaysia, attention will now be paid to how the prosecutorial system operates in other jurisdictions of the Commonwealth. A comparative approach to the analysis of the law can be useful to consider whether the current constitutional structure of Malaysia is a suitable one for ensuring prosecutorial independence and institutional accountability. In this study, it aims to learn from jurisdictions that have attempted to create a more distinct separation between the legal advisory and prosecutorial aspects of government law enforcement services to identify principles and institutional practices that could be followed if the Attorney General's Office is to be reformed in the future in Malaysia.

One of the countries that could be set as an example in regards to the prosecutorial framework is England. In England, the whole framework of the Attorney General is totally different to Malaysia. Although there are certain similarities that can be found for example, the appointment itself where the Attorney General of England and Wales are also appointed by the Prime Minister (*Lawyer or Politician: What Is the Attorney General? - Inner Temple Yearbook*, 2024). Yes, Malaysia's Attorney General was appointed by the YDPA but he must act on advice of the Prime Minister pursuant to Article 40(1) and (1A) of the Federal Constitution. People might wondering, if the Attorney General of England and Wales are appointed by the Prime Minister, does it means there still exist the conflict of interest? The conflict of interest pertaining to Attorney General in England and Wales are most likely to exist. The keywords that need to be highlighted here is the functions and roles of the Attorney General itself.

In England and Wales, the roles and functions of the Attorney General is totally different from Malaysia. In Malaysia's framework, we could say that the Attorney General wears two hats simultaneously. In England and Wales on the other hand, we could say that their Attorney General only wears one hat and a tip of another hat just for the safeguards, and accountabilities that will be discussed later. In England and Wales, the Attorney General shall take his responsibility as the legal advisor of the Government. Similar to Malaysia on this part, the Attorney General are bound by his duty to advice the government pertaining to matters involving law in his knowledge (*House of Commons - Constitutional Affairs - Fifth Report*, 2026). Besides, another roles of the Attorney

General of England and Wales are to act as guardian of the public interest and as a superintending minister on Crown Prosecution Service (Kyriakides, n.d.). Does it means the Attorney General have full authority on Prosecution as a superintending minister?

To understand that, we need to first understand who conduct the prosecution in England and Wales. Criminal prosecution in England and Wales are handled by independent authorities or bodies namely Crown Prosecution Services. The status of its independent is not simply made on whim as this body has its own source of law. The Crown Prosecution Service was created by the Prosecution of Offences Act 1985 (GOV.UK, n.d.). Apart from that, Crown Prosecution Service also is not part of ministerial departments and was led by the civil servants. Since the CPS is independent, no one have the absolute control on it. However, CPS are also answerable to the parliament and Attorney General must play his role as the superintending minister to explain the policies and major decisions of the CPS and safeguard the independent decision-making of the CPS (*How We Are Kept Accountable | the Crown Prosecution Service*, 2025). This clarify the meaning of wearing one hat and a tip of another hat when it comes to the framework of the Attorney General of England and Wales because the only thing Attorney General of England and Wales has something to do with CPS is when it comes to explain the policies and major decisions of CPS. Other than that for example; prosecutions and proceedings are all handled by the Crown Prosecution Service (*How We Are Kept Accountable | the Crown Prosecution Service*, 2025), (GOV.UK, n.d.). This might be the reason why the conflict of interest pertaining to the Attorney General and prosecution department are most likely to exist. Although the Attorney General was appointed by the political figure, it didn't spike any issues when it comes to prosecution since the one who has the authority to conduct the prosecution is not the Attornet General but the Crown Prosecution Service.

Another country that could be use as a benchmark of the reformation movement regarding the position of the Attorney General in Malaysia is Canada. Similar to England and Wales, the debate and issues pertaining to Attorney General in Canada is ceazed to happened. Through observation in regards to appointment, it is similar to UK and Malaysia where the Attorney General of Canada is also appointed by the political figure which is the Prime Minister (*House of Commons Constitutional Affairs Committee Constitutional Role of the Attorney General Fifth Report of Session 2006-07*, 2007). The question arose pertaining to the roles of the Attorney General of Canada and whether he is the one who controls the prosecution. Before we delve deeper into the scene, it is compulsory to understand the Attorney General's roles in Canada point of view. The Attorney General in Canada, as the legal representative of the Crown, is responsible for acting in the best interests of the Crown as a whole and not for any one department of Government. The Attorney General shall give the Government legal advice, be the attorney of the Crown in legal actions and defend the Constitution, the rule of law and the independence of the judiciary (Government of Canada, 2022). While observing the roles mentioned, one question arose, who is responsible for conducting the prosecution?

In following the prosecutorial framework of Canada, the prosecution was handled by the Public Prosecution Service of Canada which was led by the Director of Public

Prosecutions. Similar to Crown Prosecution Service in England and Wales, they also have their very own source of law which is the Federal Accountability Act that creates Director of Public Prosecutions Act which give such jurisdiction to conduct the prosecutions (Canada, 2026). This does bring means that they are independent in making any prosecution decisions without any extrinsic influence involve (Government of Canada, 2007). However, this also does not mean that they possess absolute power pertaining to this matter as the Attorney General acting as a check and balance mechanism could challenge any binding and final decisions made by the Public Prosecution Service of Canada by means of public written notice (Canada, 2026). As far as we observe, the prosecutorial framework in Canada is similar to England and Wales which embrace the separation between Attorney General and Public Prosecutor where each one of them only plays one main role between being a legal advisor of government or prosecutor who deems to represent the public interest.

The comparative analysis shows that there is a good example of the separation of powers between the Attorney General and prosecutorial functions in both England and Wales, and in Canada. Although the Attorney General in both jurisdictions remains the Government's major legal advisor, criminal prosecutions are delegated to separate, independent prosecutorial entities with their own laws. Malaysia, on the other hand, entrusts both roles into one constitutional function in the Federal Constitution under Article 145 and the Criminal Procedure Code, Section 376. It is thus proposed that in these comparative models, the separation of the office of the Attorney General and the Public Prosecutor will improve the independence of the Public Prosecutor, increase the accountability of the Public Prosecutor, and increase the public's trust in the Malaysian criminal justice system.

Reforming The Attorney General’s Office in Malaysia

On the basis of the constitutional analysis and comparative evaluation which were carried out in the previous section, it is submitted that Malaysia should contemplate undertaking comprehensive institutional reform to enhance prosecutorial independence without compromising the constitutional role of the Attorney General with respect to being the principal legal adviser of the Government. Such changes should not only include distinguishing the roles of the Attorney General and the Public Prosecutor, but also the creation of an institutional framework that guarantees the accountability, transparency and public trust in criminal justice administration.

The first and foremost that need to be reformed is the institutional itself. Both Attorney General office and the prosecution department need to be separated and it must not wait any longer in order to restore the public trust towards our own system. This also does bring means that an individual cannot wear two hats at the same time. Based on the comparative study conducted before, Malaysia needs to take more drastic steps to separate these two bodies. In England and Wales, they have the Crown Prosecution Service that conduct the prosecution while in Canada the prosecution process was governed by Public Prosecution Service of Canada (GOV.UK, n.d.), (Canada, 2026). This clearly helps to

avoid conflicts of interest because the positions appointed by political figures are no longer involved in decision-making. Not only that, Malaysia also needs to work on establishing a source of power that governs the separation as well as a law that explains the source of authority for prosecution as can be seen in Canada where they have Federal Accountability Act that delegates the power to prosecute to the Director of Public Prosecutions (Canada, 2026). This is important to ensure that there is no confusion and to ensure clarity in their respective jurisdictions.

However, the separation of the two personnel, the attorney general and the public prosecutor, still cannot guarantee complete freedom from the political grip that is increasingly eroding transparency in prosecution. Therefore, the government also needs to consider changing the process of appointing public prosecutors to ensure accountability and transparency. Among the things that can be done is to establish a separate Prosecutorial Service Commission to handle the hiring, promotion, and discipline of public prosecutors, shielding them from political pressure. Not only it is most likely to be free from political influence, but it can also restore the people's confidence that there is no conflict of interest (Aliran admin & Aliran admin, 2026). In addition, to uphold true justice, the Public Prosecutor must also be accountable to parliament where the prosecution are required to present annual reports and explanations for policy making (Aliran admin & Aliran admin, 2026a). Similar to England and Wales where they have the Attorney General appear on behalf of the CPS to explain any major decision and policies, this paper proposed to do the same thing but rather than the Attorney General, the head prosecution are required to appear before the parliament. To avoid any confusion, parliamentary reporting would not permit Parliament to direct prosecutorial decisions; rather, it would enhance institutional transparency by allowing scrutiny of prosecutorial policies, resource allocation, and organisational performance while preserving prosecutorial independence (*How We Are Kept Accountable | the Crown Prosecution Service*, 2025). This also does bring means that the public prosecutor, who was originally answerable only to the prime minister, now also answerable to parliament, which consists of all political figures from various parties.

From the above discussion, it can be seen that enhancing the independence of prosecutors in Malaysia should not only be through the institutional separation of the Attorney General from the Public Prosecutor, but also through the implementation of a wide-ranging transfer of powers in the constitution and legislation in accordance with the principles of transparency, accountability and operational independence. In this setup, the Attorney General would have his constitutional functions only as the Government's main legal advisor, but the prosecution would be delegated to an independent Public Prosecutor. Such changes would have been inspired by the experience of England and Wales and Canada and would strengthen the institutions and reduce the potential for real or perceived conflicts of interest in the prosecutorial system. However, it can only be when these conflicts of interest are absent that prosecutorial decisions can be regarded as truly representative of the public interest and earn public confidence. This in turn would create confidence in the administration of criminal justice in Malaysia.

Conclusion

This paper has discussed the constitutional and statutory basis of the Attorney General and the Public Prosecutor in Malaysia, especially Article 145 of the Federal Constitution and Section 376 of the Criminal Procedure Code. The analysis shows that the existing constitutional structure integrates the functions of the Public Prosecutor and the Government's chief legal representative in one constitutional position. While constitutionally sound and operating for decades, it still brings up a number of important questions about prosecutorial independence, institutional accountability, and the perception of executive influence over prosecutorial decision-making. A comparison of the situation in England and Wales and Canada provides an example of how the independence of the prosecutor could be enhanced by the establishment of a clearer institutional divide between the Attorney General and the Public Prosecutor and by maintaining the Attorney General's constitutional role as the Government's main legal advisor. Based on the comparative experiences, it is argued that Malaysia must think of constitutional and legislative changes to create an independent Office of Public Prosecutor with clear appointment procedures, safeguards and accountability procedures. The AG would have no other duties other than to provide advice to the Government on legal matters, and the Public Prosecutor would have the ability to proactively exercise his/her prosecutorial powers. It is only when prosecutorial decisions are made free from any real or perceived conflict of interest that they can be said to reflect the public interest and have public confidence in them.

It is also the intention of this paper to make positive contributions to the current institutional reform efforts in relation to the proposed separation of the Attorney General and the Public Prosecutor in Malaysia. This paper does not seek to offer a political endorsement for the reforms put forward in the Constitution or in the legislation but aims to offer a doctrinal and comparative legal analysis which could help policy makers, legislators, legal practitioners and other stake holders to review the proposed constitutional and legislative changes. The aim of the analyses and recommendations provided in this paper is to provide a useful academic reference to help design an independent, transparent and accountable prosecutorial framework in line with the current constitutional principles. Finally, improving prosecutorial independence is not just about institutional changes, but about a constitutional commitment to the rule of law, to the integrity of the criminal justice system and to the administration of justice without fear, favour or improper influence. These principles will help Malaysia to build public trust in the country's prosecutorial system and contribute to its further consolidation of constitutional democracy.

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Generative AI Statement

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