



Separation of Powers

There has been talk lately that the three branches of government in this country have lost their distinctiveness. As we progress further, this needs to be addressed, and fast.

THE recent remarks by Minister in the Prime Minister's Department, Datuk Seri Nazri Aziz, in Parliament has highlighted an interesting issue relating to the separation of powers between the legislature, executive and judiciary.

In many democratic countries around the world, the distinct and separate functions of these three components make up the three branches, or what many consider the pillars, of government. Basically, the legislature formulates the law, the executive implements it and the judiciary upholds it.

There have been views recently that these three branches have over the years seen a gradual erosion in their distinctiveness. What the critics are really saying is that the executive has been becoming more and more powerful at the expense of the legislature and the judiciary.

It does not help, of course, that a minister like Nazri (who is a member of the executive) is appointed to oversee Parliament (the legislature). It also does not help that 93 Members of Parliament (MPs) or over 40% of the total number of MPs are members of the executive by virtue of having been appointed Ministers, Deputy Ministers or Parliamentary Secretaries.

So, Nazri's recent comments and the ensuing controversy have created debate on the role of Parliament itself. The minister has declined to answer several questions in Parliament so as not to be accused of interfering.

He had earlier created another uproar by proposing that a Parliament Department be set up within Parliament. Of course, this did not go down too well with several Parliamentarians.

Nazri later clarified that what he had meant was for an administrative unit to be set up. This did little to pacify the more independent-minded MPs who cautioned that any attempts to control the affairs of Parliament by the executive were unwise.

Interestingly, just weeks before these controversies, both opposition and government backbenchers jointly supported a bid to re-enact the Parliamentary Sendees Act 1963 which was abolished in 1992. Kudos to them.

The fact that Nazri (who is also an MP) had to distance himself from supporting it only serves to highlight the conflict of interest his post holds.

Of course, there are many other areas or instances where there have been allegations that the executive is becoming all too powerful. Take the case of the media. The Press is often considered a check-and-balance mechanism on these three branches of government.

But in Malaysia, we have a situation where the executive decides on the licensing of the Press. This only gives rise to allegations that those who are critical of the government will not be issued permits, or in the case of those already issued one could stand to lose it.

As for the judiciary, it is the branch that upholds the law. Its independence, impartiality and integrity are sacred. Its judgements must be seen to be fair and, more importantly, justice must be done.

But then again, how can the judiciary be truly independent if the appointments of its head, judges or other senior officials are proposed by the executive and not by Parliament? Ironically, this is also the case in the United States. But there, Congress has the final say on such appointments.

In fact, several years ago, we even had a Law Minister, but thankfully, such appointments have since been discontinued.

The time has come to give due recognition to the functions and duties of the three pillars of government. As we progress towards developed nation status, the people's expectations will only get more demanding. The increasingly lively debates in Parliament are testament to this. But can our Parliamentarians take on this challenge and rise to the occasion?

Given our religious, racial and ethnic sensitivities, we have done very well in doing things our own way. But that does not mean that there is no room for change or improvement.

We should not allow detractors the opportunity to smear our institutions. All it needs is a bit of fine-tuning.

By addressing some of the issues, we can go a long way in building up the credibility of the three pillars. **mb**