

# Nazri's 'no' a big disappointment

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WHILE thinking about my column this week, I was reminded of a Constitutional law course that Universiti Malaya made mandatory for first-year arts students in 1990.

I don't know if the course is still being taught but I still remember it because it proved pivotal in my understanding of what Malaysia as a Constitutional democracy means.

This is what the course did for me. It taught me, and reminds me till today, that intrinsic to any democracy is the need for checks and balances in the execution of power. Hence, the separation of powers between the judiciary, the executive and the legislature in the system of governance this nation was founded on.

When I was a student, the need for checks and balances on executive power was brutally apparent. In 1987, then prime minister and home minister Datuk Seri Dr Mahathir Mohamad used the Internal Security Act (ISA) to detain without trial more than 100 Malaysians. He also used his

absolute powers under the Printing Presses and Publications Act (PPPA) to shut down several newspapers, one of which I worked for after it was reopened. *Operasi Lalang* was a dark chapter in Malaysia's democracy, and its impact continues to reverberate today.

The executive didn't just stop there. It also acted to curb

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the judiciary – the other arm of government – which led to the un-Constitutional and unjust sacking of the then Lord President Tun Salleh Abas and two other Supreme Court judges.

These events are important reminders that while power corrupts, unfettered power not only corrupts absolutely, it also

has the capacity to destroy the very institutions that make our nation a democracy.

Hence, Malaysians should view with huge disappointment and outrage last week's statement by Minister in the Prime Minister's Department Datuk Seri Mohamed Nazri Abdul Aziz.

He rejected calls, including by the Human Rights Commission of Malaysia, for a review of laws that prevent the judicial review of ministerial decisions, saying ministerial decisions should not be challenged because it

would put ministers in an "uncomfortable position" or cause them to lose confidence in their decision-making.

More tellingly, Nazri was quoted as saying that no minister with a sound mind would make decisions that would jeopardise his or her own political future.

Apart from the ISA and the PPPA, there are other laws I can think of that give the executive absolute discretionary powers. Among others are the Official Secrets Act (OSA) which stipulates that any document classified as "Top Secret", "Secret" "Confidential" or "Restricted" by a minister, the menteri besar or chief minister of a state, or any public officer appointed as per the Act, is an "official secret".

Declaring something an "official secret" under the OSA cannot "be questioned in any court on any ground whatsoever". Which has led to some of the most ridiculous abuse of power in this country. For example, when the curator of the state-run Sultan Alam Shah Museum declared as "official secret" the scientific evidence that supposedly proves the authenticity of displays in the ongoing *Ghosts, Genies and Coffins* exhibition.

Even our Film Censorship Act stipulates that, "No decision of the Minister, the Board or the Appeal Committee under this Act or any regulations made under this Act shall be subject to appeal or review by any court on any ground"

But more tragically, for real human lives, is the use of absolute executive powers under the ISA and the Emergency (Public Order and Crime Prevention) Ordinance (EO). There were more than 100 ISA and 712 EO detainees as of last year.

Both laws allow for detention without trial that can be

renewed indefinitely every two years, after the first 60 days of detention.

While my Constitutional law course was instrumental in helping me understand what a democracy means, I doubt that one needs to go through the course to understand why checks and balances on power are crucial to ensure justice is fairly done and good governance prevails at all times.

There are too many real-life examples of our times that already speak volumes of the need for ministerial decisions to be subject to judicial review.

These examples also raise questions of accountability that Nazri inadvertently provided an "answer" for when he said ministers take into account their political future when making decisions. Not justice or fairness or democratic principles, mind you.

Hence, we need to ask the present administration: Will it continue to hide behind the executive's absolute powers under laws or will it seek to be accountable and transparent in its execution of power?

Indeed, if the call for accountability and transparency by the prime minister is not a mere political gimmick, his administration must dismantle the very legal clauses that make government unaccountable and untransparent.

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Shape of a Pocket

by Jacqueline Ann Surin