

Wither the Oath

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The Federal Constitution makes it mandatory that before Ministers or Deputy Ministers can exercise any of the functions of his office, he must first take his oath of office, allegiance and secrecy before His Majesty, the King.ⁱⁱ

Similarly, the Speaker of the Dewan Rakyat cannot assume his duties until he takes the oath of office and allegiance.ⁱⁱⁱ

Likewise members of either Houses of Parliament cannot take their seat in Parliament until they have taken their oath of office & allegiance (save & except in the case of the election of the speakers to the respective Houses).^{iv}

That oath of office & allegiance under the Federal Constitution obliges the Ministers, Deputy Ministers, Speakers and members of both Houses to swear^v:

- (i) To faithfully discharge their duties to the best of their ability;
- (ii) To bear true faith and allegiance to Malaysia; and
- (iii) To preserve, protect and defend the Federal Constitution of Malaysia.

This Constitutional Oath is sacrosanct, since without which, Ministers and the respective Speakers of both Houses cannot take office, while Members of Parliament will not be allowed to take their seats in Parliament.

This oath becomes even more prevalent since the Federal Constitution is expressed as the supreme law of the nation.^{vi} Hence, the oath to preserve, protect and defend the Federal Constitution; means the Executive as well as Parliament, *“must uphold the concept of accountability, transparency and good governance and the failure to do so will surmount to breach of the constitutional framework”*.^{vii}

Such accountability for instance is set out in the Federal Constitution where it provides that Cabinet shall be collectively responsible to Parliament.^{viii} There lies the duty of the Executive to Parliament. Accordingly if the Parliament sitting on 18/5/2020 is only limited to the Royal Address with no debate,^{ix} that would be an affront to the Federal Constitution.

Granted that the Federal Constitution does provide for each House of Parliament to regulate its own procedures^x, but such procedures cannot override the expressed provisions of the Federal Constitution.

The ‘Rukun Negara’ was introduced to ensure that all pillars of the Constitution (that includes Parliament and the Executive) as well as the public are beholden to: (a) Belief In God; (b) Loyalty To King And Country; (c) Supremacy of The Constitution; (d) Rule Of Law; (e) Courtesy And Morality. Such is our current state of affairs that it is opportune now to be reminded of these basic principles.

To conclude, it is held that *“Every legal power must have legal limits, otherwise there is dictatorship.”*^{xi} Such tyranny is avoided through the adherence to the Constitutional Oath of office. Paying lip service to this oath will only erode the protection envisaged in the Federal Constitution.

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ⁱⁱ Articles 43(6) & 43A(3) Federal Constitution

ⁱⁱⁱ Article 57(1A) Federal Constitution

^{iv} Article 59(1) Federal Constitution

^v 6th Schedule Federal Constitution

^{vi} Article 4 Federal Constitution.

^{vii} The Constitutional Oath jurisprudence has been developed in several judgments namely (i) Nik Noorhafizi bin Nik Ibrahim & Ors v PP [2014] 2 CLJ 2737; (ii) Nik Nazmi bin Nik Ahmad v PP [2014] 4 CLJ 9448; (iii) Teh Guat Hong v Perbadanan Tabung Pendidikan Tinggi Nasional [2015] 3 AMR 359; (iv) Chong Chung Moi @ Christine Chong v The Government of the State of Sabah & Ors [2007] 5 MLJ 441. See also see Social Justice: Constitutional Oath, Rule of Law & Judicial Review – Malaysian Chapter @ www.janablaw.com.

^{viii} Article 43(3) Federal Constitution

^{ix} Malaymail (13/5/2020) - Citing Health Concerns Speaker Says No Debate In Dewan Rakyat On May 18 Sit

^x See Ah Thian v. Government of Malaysia [1976] 2 MLJ 112 at 113

^{xi} Pengarah Tanah dan Galian, Wilayah Persekutuan v Sri Lempah Enterprise Sdn Bhd [1979] 1 MLJ 135