

AFFIRMATIVE ACTION IN MALAYSIA: A BACKGROUND

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MALAYA: A BRIEF HISTORY

The history of Malaya goes back for nearly two thousand years. In the early Christian era it was an outpost of the Hindu civilization of India; in the twelfth and thirteenth centuries it was brought within Islam. In early 16th century, Portuguese conquered Malacca. They were to rule here for a century till 1611, when the Dutch captured Malacca. An opportunity for the British came in the last decades of the 18th century when the Dutch Empire began to weaken. When the British took over Malaya, the latter was virtually a primitive jungle land with no accumulated capital of its own. The Malays were fond of living subsistence life through agriculture and fishing activities, and were thus called “Nature’s gentlemen” (Li 1955: 84). However, the British had come for trade and economic activities. The vast natural resources of Malaya, particularly tin and rubber, assumed great economic significance for the colonial rulers. They now started looking for cheap laborers to work in tin mining and rubber plantations, the two centers around which the economic history of Malaya has evolved. When the British tried to persuade the Malays for the purpose, they refused to do so. The Malays though hard-working enough on their rice fields and in their orchards, were disinclined to the routine drudgery of mines or plantations (Purcell 1945: 36); instead they preferred living with subsistence economy that provided enough for their livelihood (Sandhu 1962: 46). Moreover, the Malays were quite happy with the vast

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natural endowment they had and did not want to work as laborers due to the tropical climate. This naturally led the British rulers to turn to the world's two largest labor reservoirs, China and India. Favorable immigration policies were framed to encourage Chinese and Indian migration to work in tin mining and rubber estates respectively.

CHINESE AND INDIANS AS IMMIGRANTS

The Chinese were the pioneer miners and export agriculturalists in the Malay States. Overpopulation and political conflict and the rising demand of the British tin-plate industry, the Chinese immigrants had begun to flood into the tin rich states of Perak, Selangor and Negri Sembilan from the 1820s, well before the British administration could lay their foot over these states. Periodic famines and other natural calamities in southern China also contributed to large-scale emigration to Malaya. However, with a long tradition of worker solidarity and society organizations such as secret society feuds, the Chinese were politically volatile and commercially tightly organized having greater bargaining power. In such a scenario, the British started looking for much cheaper and more docile labor (Stenson 1980: 15).

The migration of Indians to Malay first began as domestic servants and as agricultural laborers soon after the takeover of the state of Penang by the British Empire in 1786. The Industrial Revolution and the development of large-scale production in Britain further heightened the demand for cheap labor to work in rubber plantations especially after the rubber boom in 1905.

BRITISH-MALAY RELATIONS

The British formed a whole set of treaties and agreements with the Malay Rulers which provided that each Malay Ruler would accept a British officer whose advice must be asked and acted upon on all questions other than those relating to Malay Religion and Custom. This had formed the basis of the Protectorate System. The British recognized that the Malay states belonged exclusively to the Malays. The Malays enjoyed political paramountcy in relation to the non-Malay immigrants who were basically Chinese or Indians (Vasil 1980: 12). Special privilege and status was accorded to the Malay Sultans. This differential treatment meted out to people belonging to different ethnicity and race was to sow the seeds of preferential government policies

and programs in independent Malaysia in favor of one community to the detriment of the others. In the Malay States, the British were obliged by the treaties to protect the Malays from the superior enterprise and industry of the immigrants that was tending to disposes them. This protection in due course of time took the form of land reservations and preference for Malays in government employment (Purcell 1945: 37). The British policy of reserving land for Malays continued even after the independence.

JAPANESE OCCUPATION OF MALAYA

It was during the Second World War that the Japanese attacked Malaya in 1941 and occupied it till 1945. The Japanese policies towards the Malays and the Chinese further widened the racial divide. Though the Japanese reduced the status and special privilege enjoyed by the Sultans during British rule, but as a whole the Malays were generally treated as Japanese collaborators and were inducted as administrators and government officials of high rank for the governance of the country. Most of the ethnic Chinese on the other hand, were directly or indirectly fighting the communist guerrilla warfare against the Japanese in Malaya. Under such a scenario, the Japanese meted out the most severe kind of punishment to the Chinese, taking them into lorries to rural areas only to be gunned down mercilessly by the military. Mass killings of Chinese at the hands of the Japanese took place during this period (Kheng 1983: 40-48).

MALAY STRUGGLE FOR INDEPENDENCE

Before the Second World War, the Malays largely remained disorganized politically. But the War brought the Malays the awakening that was required to unite the country as one whole. The occasion was the British Plan of Malayan Union, which the Malays considered as amounting to a complete annexation of their country and endangering their cultural and national identity (Vasil 1980: 63). The Plan called for the abolition of special position of the Malays; it also proposed equal citizenship for non-Malays. It entailed no Malay bias. It was to be a multiracial, unitary state, built over the heads of the Malay Sultans who would now lose their ceremonial supremacy as well as the real power of administration which the Residential System had long ago effectively curtailed (Milner 1987: 774) Consequently, in the first week of March 1946, a Pan-Malaysian Malay Congress was conveyed at Kuala Lumpur that saw participation of forty-one Malay

organizations from all across the country. The outcome was the formation of the United Malays National Organization (UMNO) with DatoOnn bin Jaafar as its President. The sole aim was to unite all the Malays to revoke the Malayan Union Plan. Within a span of two years of its formation, the UMNO was successful in forcing the British to quit its Malayan Union Plan.

For the next few years, DatoOnn embarked on a plan to convert the communal UMNO character to a non-communal national organization where all other ethnic communities i.e. the ethnic Chinese and Indians, could become the members of the organization with the same rights and privileges that the Malays enjoyed. Dato also believed that a single nationality was a prerequisite to achieve self-government and independence. However, though his plan met with widespread and strong opposition from the Malays, he was able to pull it through because of his stature and popularity within the UMNO.

However, things were to take a new turn when in August 1951; DatoOnn resigned from the UMNO Presidency on the issue of forming a new multi-racial political organization called the Independence of Malaya Party (IMP). Tunku Abdul Rahman was elected as the new President of UMNO. Immediately after assuming the office, Tunku started making extreme statements like “Malaya is for Malays and it should not be governed by a mixture of races” (The Strait Times, 1 July 1952). Very soon the UMNO became a communal organization meant just for the Malays and the protection of their culture and national identity.

Post-War period also witnessed the emergence of new organizations to safeguard the interests and demands of the non-Malays. The Malayan Indian Congress (MIC) was formed in August 1946 at Kuala Lumpur with the objectives of attaining among others, positive inter-racial harmony and cooperation, general prosperity and stability of the country, and a fair share for the Indian community in the future of the country. Similarly, in 1949, the Malayan Chinese Association (MCA) came into being with the fundamental objectives of promoting and maintaining inter-racial harmony and to work to secure justice to the Chinese community in Malaya (Roff 1965: 42).

Though different ethnic communities created these organizations, their goal was same: to achieve inter-racial harmony in Malaya. This distrust and hatred towards one another ethnic community has been attributed to the British policy of differential treatment and segregation of ethnic groups along race-economic function. Under the British rule, Malaya was maintained as *Tanah Melayu* (Land of the Malaya) and the indigenous Malays were associated with the government, politics and administration of the country, and the immigrant non-Malay community was to have complete freedom in trade and commercial activities (Vasil 1980: 60). There existed a balance between the Malays and the ethnic Chinese. The Malays, who enjoyed the political paramountcy, did not bother much with the Chinese having an upper hand in the economic and trade related activities. Similarly, the Chinese were quite happy with their dominant economic status in Malaya. However, this separation of politics from economic activity had a short span of life till the Chinese wereto taste the power and get involved into the political sphere in Malaysia formally, which was hitherto been a domain of the Malays only. The MCA formed an alliance with the UMNO in the Kuala Lumpur elections of 1952, and this alliance was to shape the politics of Malaysia in future. Joint candidates were fielded. With the winning of six seats by MCA, Chinese leadership acquired confidence in their own organization and their ability to attract Chinese support. Subsequently the alliance was formed at the national level and on a more permanent basis; the MIC also joined it in October 1954.

Another factor that contributed to the racial tension between Chinese and Malays was the Sino-Japanese rivalry. The Sino-Japanese War in China started before the Japanese invaded Malaya. Even before the invasion, anti Japanese activities among the Chinese community had already begun in this country. So, when the Japanese arrived, the hostility continued. Essentially, therefore, the anti-Japanese movement of the Chinese in Malaya was the projection of the politics of China into this country. The Japanese hostile acts against the Chinese and their apparently more favorable treatment of the Malays helped to make the Chinese community feel its separate identity more acutely. This did not only have an adverse effect in the development of Malayan and later Malaysian nationalism, but it was also the beginning of racial tension between

the Malays and the Chinese (Zainal, 1970: 97). Also, the government policy toward the squatters during the Emergency period (1948-1960) had important implications for inter-ethnic relations.

In 1956, the British appointed an independent Constitutional Commission (Reid Commission) to draft a Constitution for independent Malaya. The Commission took into consideration the demands and the interests of the Alliance, which represented all the major ethnic communities in Malaya. On the issue of Special Position of the Malays, the Commission recommended for the continuation of those special position and rights that Malays had been enjoying during the British rule. These were: a) reservations of land for Malays, b) quotas for admission to the public services, c) quotas in respect of the issuing of permits or licenses, and d) preferential treatment while grant scholarship and aid for education. However, the Commission preferred the continuation of special Malay privileges through ordinary administrative law, and not constitutional law. It also recommended a time limit of fifteen years, after which the Parliament, on the basis of a Status Report submitted by the government, was to decide whether to retain or to reduce any quotas or to discontinue them entirely. Furthermore, it also advised against providing any new quotas or preferences to the Malays, except for what they had been given by the British (The Reid Commission Report 1957). The Commission made these recommendations because the Malay community lagged behind the non-Malays in the spheres of economic activities and education, and hence it was necessary that Malays got certain special privileges in an independent Malaya so as to compete with other communities. The Commission also recommended allowing of Chinese, Tamil and English to function as official languages for ten years; there was no special provision for Islam; the Rulers were reduced to a ceremonial role; and the creation of new Malay Reservations was restricted (Harper 1999: 352). However, the UMNO vehemently opposed the recommendations of the Reid Commission. Eventually, UMNO successfully obtained constitutional provisions for special privileges for the Malays, and also dropped the review clause.

AFFIRMATIVE ACTION AND MALAYSIAN CONSTITUTION

Constitutionally mandated affirmative action policies were formulated to rectify the perceived weakness of the Malay community in the economic field, the public service and the problem of Malay poverty at the time of Independence as against the ethnic Chinese and Indians who were economically well off than the Malays. At that time, the Chinese dominated most of the economic activities, while the Malays worked in the agricultural sector in rural areas. Even population wise, Malays were not in majority; they consisted of 49 percent population, while the Chinese and Indians were 38 percent and 11 percent of the population respectively. Hence, population-wise, Malays did not form even a majority. In 1957, the year Malaysia became independent, while the Malays made up 62.1 percent of agricultural workers; they comprised only 4.3 percent of architects, 7.3 percent of engineers, and 6.8 percent of accountants (Brown 1994: 218).

Article 153 of the Constitution of Malaysia provides that “It shall be the responsibility of the Yang di-PertuanAgong to safeguard the special position of the Malays and natives of any of the States of Sabah and Sarawak and the legitimate interests of other communities in accordance with the provisions of this Article” (Constitution of Malaysia 2010).The Yang di-PertuanAgong is the Head of the State of Malaysia; and he is empowered to make reservations for these people in the public service, educational institutions, scholarships, and business permits or licenses However, the final Constitution did not include the time limit recommendation as prescribed by the Constitutional Commission. Instead, it was left to the Yang di-PertuanAgong to review from time to time this Special Position of the Malays, and accordingly determine its utility and necessity. It was believed that “in the long run these provisions would operate not to separate the people into classes but to hasten the process of national unity. Once national unit is achieved, the special rights will die a natural death” (Federation of Malaya, Legislative Council debates, 10 July 1957). Thus the arrangement was meant to be transitional in nature. Article 89 reserves certain land for the Malays and empower the State to declare any government land as belonging to the Malays with the consent of the proprietor. The Article also seeks to protect the land belonging to the Malays, as these could not be acquired at any cost by the non-Malays.

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