

# Three Perspectives for Managing Multiethnic As Racial Integration Guarantee in Malaysia Under The Federal Constitution

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## Abstract

Malaysia is unique because of its multi-ethnic composition. This has been the backbone of daily life for every ethnic that are free to practise its own cultures and customs. The racial relations in Malaysia has become an interesting topic that always represents a unity symbol and subject for discussion and political campaigns. Today, racial unity has become susceptible as it has been made the basis for hate speech and actions. However, everyone must understand that the discussion on a balanced multi-ethnic community should be based on the highest authority in the country i.e. the Federal Constitution of Malaysia, which governs the interests of all parties in the country. This paper aimed at discussing the perspectives of managing the multiethnic/ multi-ethnic community in the framework of the Federal Constitution. This paper adopted qualitative research method based on library research design. Data were collected from books, articles and newspapers related to multiethnic/ multi-ethnic community and management of racial relations in Malaysia. The data were then analysed using descriptive analysis and arranged based on themes. This paper found out that there are three perspectives for understanding the arrangement of multiethnic/ multi-ethnic community in Malaysia. They are the special rights of the Malays which are protected under Article 153, (ii) the protection of the non-Bumiputera, and (iii) political accommodation in the administration of the nation. As a conclusion, the Federal Constitution of Malaysia does provide constitutional protection or guarantee for each and every race. Thus, this protection should always be observed, respected and referred to in managing racial relations and issues in Malaysia.

**Keywords:** Integration, Federal Constitution, Managing Multiethnic Community

## Introduction

The Federal Constitution is the highest law of the land and thus the most important document in Malaysia. Every Malaysian citizen must understand the contents of this document and observe them in daily life to ensure harmonious and peaceful life in the nation. Dialogue and discussion series in the community are done openly to ensure the constitutional law is clearly understood so that it can become one of the means for the integration of multi-ethnic

community. Sisk (1996) stated two methods that can be used in resolving disputes within multi-ethnic communities. These methods are consultation (conciliation) and negotiation. In fact from the colonial days until now, Malaysia has practised these two methods in settling racial disputes among members of the community.

The Community Liaison Committees (CLC) was established in 1948 and was regarded as Malayan Blue-Print by the Times on 18 September 1948. This committee was noted for using both the above methods in exercising its functions. Thus CLC was seen as one of the integration bases which were vital in the formation of community and nation in Malaysia (Mohamed, 2018). Next is the process of social contract which became the starting point of the needs for the formation of the Federal Constitution (Ibrahim, 2020). As such, the Federal Constitution is one of the integration bases in managing the nation and its multi-ethnic communities. An excerpt from the Star dated 3<sup>rd</sup> September 2015 explained the link between racial integration and the Federal Constitution. However a question may be raised, "Does the constitution divide us or provide an arrangement which can be applied in a nation of multi-ethnic communities so that they can live in peace and harmony?" (Faruqi, 2015).

Faruqi (2015) stated that the Federal Constitution document is an attempt to maintain rights, privileges and legitimate expectations of every race. He further listed several characteristics of the constitution which are regarded as arrangement that can be practised for a multi-ethnic nation to live together in peace and harmony. Among these characteristics are 'the privileges of the Malays' (Article 153) which can be further divided into: 1) the Malay Rulers, 2) Islam as the Official Religion, 3) Syariah Judiciary, 4) Special Rights of the Malays, 5) Malay as the Official Language, 6) Protection of the Malay Customary Laws, and 7) the Natives of Sabah and Sarawak.

The second characteristic is 'the protection for other races'. This characteristic connotes that the followers of other religions can practise their respective religions and religious practices in any part of Malaysia. It also includes the right of every citizen to be nominated as a candidate in an election without taking into account his or her race and religion. Similarly it also means that membership to the judiciary, executive, legislature and civil service commission is open to all races. Education is also provided free for early education stage i.e. primary schools and secondary schools. He further stressed that the rules embodied in the constitution come with the spirit of giving and receiving. For example, the Syariah judiciary does not have jurisdiction over non-Muslims. This is in line with Islam as the religion of the federation but other religions can be practised in peace in the country.

The third characteristic refers to political accommodation which was reflected as "In addition to the legal provisions above, the 'rainbow amalgamation' that has ruled the country for 58+2 years ago, was formed on the basis of inter-racial place of living, with the spirit of moderation and desirelessness, the ideological spirit and confidence in the other multi racial community have left behind a bitter heritage (Faruqi 2015). This form of relationship is very important in building power sharing structure in the formation of government especially in Malaysia.

Other characteristics that contribute to the management of communal life in Malaysia, are freedom to perform economic activities, and freedom to safeguard ethnic identity, culture, language, way of life, dressing, foods, music and schooling.

### **Methodology**

This paper adopted qualitative research method based on library research design where analysis was made to printed as well as electronic sources. This library research used

secondary sources in line with the aim of this paper by reviewing existing literatures relating to arrangement / management of multi-races in Malaysia. The advantage of using library research is time saving, ability to get current thematic studies so that data could strengthen one and another.

Data were collected from articles, newspapers and books related to the management of multi-ethnic community and racial integration in Malaysia. These data were then analysed in three stages i.e. data classification, presentation and conclusion. The data were classified according to the theme of this paper i.e. the protection of the special privileges of the Malays under Article 153, protection to the rights of non-Bumiputera and political accommodation in ruling the country. The data were then presented in understandable arrangement and were later analysed descriptively.

## **Findings and Discussion**

### **i. Balancing the Rights, Privileges and Legitimate Expectations of Every Race**

Sani (1973) stated that the Reid Commission viewed the Malay privileges as the continuation of the early treaty between the Malay states and the British. Abbas (1985) defined the special position of the Malays includes posts in public service, scholarships, educational aid, permits and licences for trade and commerce. This special position also includes Articles 89 and 90 which are related to Malay reserve land and admission of the Malays to *Rejimen Askar Melayu di-Raja* (the Royal Malay Soldier Regiment) under Article 8(5). He further added that this special position is not absolute, but is balanced on the legitimate interests of other races.

Milne and Mauzy (1992) explained that the special position and the legitimate interest of other races are the results of negotiation process between the Malays and non-Malays. This situation shows that a short term justice for multi racial demands has been achieved. This view of Milne and Mauzy proves that Article 153 was mutually agreed by all races during the stage of developing constitution but was not clearly accepted by the non-Malays in the long term (Muslimin, 2013). Sisk (1996) explained that the negotiation process was the step taken by Malaya much earlier than its independence in order to overcome racial conflicts.

The special position of the Malays is not a new legal provision during the British administration. This provision had already been made as a clause in the Federation of Malaya Agreement 1948 and it fell under the obligations of the British High Commissioner. In Part III, Power to Govern the Federation, Paragraph 19 (c) provided that the British High Commissioner had the duty to specifically protect the safety of the Malays. This was further continued by the Reid Commission for 15 years after the independence (Muslim *et al.*, 2013). Harding (1969) stated that Article 153, which is about the special position of the Malays, is not common in any constitution. The Federal Constitution does not protect the rights of the minority but those of the majority. However this issue is workable in the Malaysian constitutional framework and the concept of discrimination can be aligned with the concept of equality which is the basic concept in constitutional law.

*Whereas the discussion on the special position of the Malays is to see the rationale for the Malays to enjoy the special position is due to the agreement between the Malays and non-Malays whereby the non-Malays would get citizenship via jus soli and the Malays would get the special position, Malay language as the national language, and Islam as the religion of the federation. Based on statistics, it is clear that the Malays are still backward in public service, economy and education. This book concludes that respect to the rights and legitimate interests of every ethnic*

*in Malaysia as stated in the Federal Constitution must be duly observed to prevent any racial conflict* (Translated from Muslim *et al.*, 2013).

According to Faaland, Parkinson and Saniman (2002), the special position refers to Articles 3, 32, 89, 90, 152 and 153 of the Federal Constitution. Bari (2001) opined that the word Malay in the Federal Constitution connotes the Malay Rulers, special position of the Malays, Islam as the religion of the Federation, election constituency boundary and the appointment of *Menteri Besar* in the states that have rulers. Based on the above discussion, the special position of the Malays are contained in Articles 153, 89, 90, 8(5) and the Thirteenth Schedule. As such, this article will discuss Articles 153, 89, 90, 8(5)(f) and the Thirteenth Schedule of the Federal Constitution.

In addition, the view of Raja Nazrin Shah (as he then was) can be referred to when he gave his speech in conjunction with the celebration of the 80<sup>th</sup>. Birthday of Sultan Perak Sultan Azlan Shah at Istana Iskandariah. He stated that the political stability in the country very much depends on the mind readiness of the Malays to face changes when there is a conflict relating to Islamic religion, the sovereignty of the Malay Rulers, Malay language or special position of the Malays (Shah, 2008). In this regard, Tun Tan Siew Sin said in the Legislative Council of the Federation of Malaya 1956:

*Firstly, the principle of special position of the Malays has been incorporated in the Federation of Malaya Agreement 1948. As such, the Malays cannot be asked to surrender what they already have, like they do not ask other races to surrender their respective rights that they already have.* (own translation)

Since then and until now, Article 153 is still relevant to be continued so as to achieve its objectives especially in the field of economy and education. However, at the same time, facilities and privileges have also been given to the non-Malays in the field of education. For example, when the country became independent, the government at that time did not abolish vernacular schools like Chinese and Tamil medium schools. Instead, these schools still go on until today although the Razak Report 1956 recommended a national education system as per the twelfth paragraph of the report.

*The foundation of the education in this country aims at unifying children of all races in this country through the application of a set of education rules which are applicable to all races, and the use of Bahasa Kebangsaan as the medium of instruction. Although this matter cannot be implemented promptly but must be implemented gradually.*

Similarly with the passing of MARA Act and the establishment of Ministry of Education which were specifically meant for the Malays. However in order to ensure close inter-racial relations and unity among all students, the above special privileges are also extended to the non-Malays when the government allowed them to enter MRSM and matriculation centres with a quota of 10%. Moreover the admission of students to public universities which was earlier based on quota system was changed to meritocracy system where students are admitted based on their academic merits without taking into account their races. Although education has its special position in the Federal Constitution, accommodative attitude between the Malays and non-Malays has been established in order to further strengthen the multi-racial relations in Malaysia (Baharuddin, 2007).

Thus it is clear from the above discussion that the special position of the Malays does not go against the principles of justice and equality based on the four justification forwarded by Nazri Muslimin, *et.al.*, 2013). Firstly, although the Malays enjoy privileges as stated in the Federal Constitution, they were not obtained through confiscation of the non-Malays' properties. Secondly, the implementation of the privileges of the Malays does not affect the economic position, education and polity of the non-Malays. In fact the non-Malay's achievement in economic and educational sectors is better than the Malays. Thirdly, the special position of the Malays has been in existence long before the independence and was reasserted in the Federal Constitution at the time of its promulgation. Fourthly, this matter is the result of an agreement concluded through consultation and negotiation among all races prior to the independence. Such agreement is known as 'Social Contract'.

## **ii. Protection of Other Races**

The second feature is the protection for other races which connotes to the space given to the non-Bumiputeras in Malaysia to practise their respective beliefs, languages and cultures. The issue of Bumiputera privileges has always garnered discussions that we might see this right as unjust as it fits for selected races only not others. In reality, the rights of non-bumiputera citizens are clearly provided and guaranteed in the Federal Constitution. Thus these constitutional provisions should be read and explained properly so that they are not given biased constitutional interpretation. Reading constitutional provisions should not be read like mathematics where 'one plus one shall be two'. Instead, a constitutional provision should be understood from its purpose, objectives and the wish for unity to be achieved.

The protection for other races in the Federal Constitution is a special guarantee which governs the rights of the non-Malays. The fact that such special protection is clearly embodied in the Federal Constitution proves that there is no discrimination among races in Malaysia. This protection also recognises the non-bumiputeras as citizens who are accorded with certain privileges as the citizens of Malaysia.

The special privileges of Bumiputra are reflected in Articles 3(1), 11(4) and 12 (2). These articles are related to Islamic Religion. Other provisions include Articles 32, 38, 70,71 dan 181 which are related to Constitutional Monarch, Rulers of the states, Yang Di-Pertuan Agong and the Conference of Rulers. In addition, Article 152 is about the Malay language and Article 153 is about the special privileges of the Malays. This element is known as the main pillar of the constitution which was the original element that was preserved in the Federal Constitution (Muslim et al., 2011).

From the other perspective, the constitutional provision on Islam as the Religion of the Federation also states that other religions can be practised peacefully but cannot be propagated to Muslims (Article 3 of the Federal Constitution). This reflects freedom of religion is guaranteed as all persons in Malaysia can profess and practise other religion other than Islam. Religion is a sensitive issue to its followers. Thus when the constitution was promulgated, this sentiment was considered and guaranteed in Article 11. This shows that there is guaranty to the followers of other religions that they are not forced to profess the religion of Islam (BeritaHarian, 2015).

When discussing the constitutional provision that allows the followers of other religion to practise their respective religions and practices, it can be understood that the Federal Constitution creates the spirit of giving and receiving. For example, the Syariah judiciary does

not have jurisdiction over the non-Muslims though Islam is statutorily positioned as the religion of the Federation. Not only that, the non-Muslims also can practise their own religions in peace and harmony in any part of the Federation. In addition public holidays are also declared for the purpose of celebrating other religions' festivals, like Thaipusam and Christmas, in public places. Thus there is compulsion towards the followers of any religion to embrace another religion or to leave their religion. In fact the multi-religious character of Malaysia has been recognised as a peculiar identity of Malaysia among the countries in the world. In summary, the fact that all religions can be practised in Malaysia is a way to recognise the multi-racial and multi-religious country Malaysia has. This can also be the cause for unity among all citizens of Malaysia. As such this spirit should not be disturbed by any issue of religious difference or intolerance from any party with personal interest or agenda.

Next, the right of the non-bumiputera is also guaranteed for them to be involved in policy making. As a citizen of Malaysia, a non-bumiputera is statutorily guaranteed to contest in election and to be appointed as member of the legislature, irrespective of his race and religion. Moreover, members of the judiciary, cabinet, Parliament and Public Service Commission are open to all races and religions. The first general election of the Fracial paderation of Malaya 1955 witnessed that the Alliance (*Perikatan*) Party, which consisted of the three major races in the country won the election (*Arkib Negara Malaysia, 2021*). This alliance that was formed without abolishing any race's party, is the proof that the non-bumiputera did enjoy the right to voice out their views and opinions via associations.

This is different from the practice of segregation where the black communities were not given the right to choose important facilities like education and transportation that were same with the white. In line with the changing time and necessity, more political parties that are open for all races, have been established. This has maintained the opportunity for non-Bumiputera to become people's representatives in the legislature. This open opportunity has resulted in benefits to the non-Bumiputera to voice out their own views and interests. As such, the tolerance spirit which has been in place since the earlier fighting for the independence until now is the proof that there is room for every race that lives in this country.

Apart from that, education is another important aspect which has been given proper emphasis since the independence. Free education has been given to all citizens at the early education stage in primary schools and secondary schools. Vernacular schools that use their own mother-tongue language have been permitted despite the establishment of more national schools by the government. The 13<sup>th</sup>. May incident really affected the politics, economy as well as education in the country. The education landscape was therefore improved whereby the Malay language was made the medium of instruction, and the school curriculums were coordinated for all schools (Azrin, 2011). However, the vernacular schools have been permitted to run until today. Although these measures give impacts to the racial unity in long term, other improvement measures are continuously introduced in line with current time. Thus it is hoped that unity among races can be achieved based on the tolerance spirit and love for the country.

The Federal Constitution is the highest law of the land as well as the main document of reference. Any law that contravenes any provision of the constitution is unconstitutional and therefore, void (Article 4 of the Federal Constitution). The constitution also clearly provides and guarantees the protection for other races in Malaysia. As such it is clear that there is no denial of the rights of other races in this country. The guarantee of the rights of the Bumiputera and non-Bumiputera was incorporated in the Federal Constitution based on the spirit of unity and tolerance after taking into account of the interests of all parties involved.

Thus the constitution should serve as the guidelines for arranging and managing multi-racial communities to ensure unity is continuously observed in the country.

### **iii. Political Accommodation**

Several scholars in history and politics recognised that the political system in Malaysia is based on elite political accommodation. Among them are Means (1991), Fernando (2007), Fitri & Foad (2013) who explained the role of political elites. However this paper uses the term of tribal heads to explain their roles. This can be proved by the document GB-0033-MAC (22/5/66 1949: 40) which states "*The principle human, social and political problem is to join these various racial and religious communities together in a spirit of mutual tolerance, confidence and friendship*". According to Shamsul (2012) accommodation is a process where every racial group realises and respects the norms and values of other racial groups that exist in a community. To breed this awareness, long times and process must be observed. This is what happened to JPK which instils mutual understanding and knowing each other through cooperation throughout the meetings held.

Political accommodation culture and stable politics were achieved as a result of negotiation and conciliation among the elite leaders of every race that was in Malaysia before the independence. This success arranged a plan for power sharing among communal politics to address and avoid conflicts and violence on the eve of the independence. The global wave of modernisation did influence the then Federation of Malaya when the government at that time accepted to adopt democracy, an election system that was more known as 'Consociationalism State' (Faruqi, 2021). According to Shad (2021) the yardstick for the success of this power sharing can be measured via Global Peace Index where Malaysia was at the 20<sup>th</sup> place among 153 in 2020. Thus the power sharing is very important to ensure political, economic and social stability in a country.

Looking at the formation of Malaysia from the historical perspective, it is worth it to highlight Sir MacDonald's observation. He admitted that conflict happened during the process of getting cooperation among races at that time that there was 'harsh situations' in term of action and voice (GB-0033-MAC 120 1970: 148). However the attempt to free the Federation of Malaya from the British rule opened a vital opportunity for every race involved in CLC to understand the different cultures, customs and religions of all races so that a consensus could be achieved. Finally this process managed to offer a collective agreement among all differing factions. This collective agreement referred to by Purcell (1954) as the 'agreed views'. Finally it brought about the formation of several multi-ethnic parties as the result of the racial alliance.

This proof can be seen until today. In 1955 until 2018, the Barisan Nasional (allied party) had always won the general election and thus formed the government. However in 2018, Pakatan Harapan (Alliance of Hope) succeeded the government after a big win in the 14<sup>th</sup> general election.

Economic stability is also another important element for unifying communities in a country. The Malaya Plan, which was later known as the Malaysian Plan, provides the list of strategies and action plan at national level to create opportunities for all walks of people in the country regardless of their race and religion. The involvement of the non-Malays in the economic activities has developed the needed infrastructures and economic prosperity as well as the country's stability. This is stated in details by Faruqi (2021) in his book.

In the commercial and economic area, there is right to property, freedom of trade and commerce, a relatively open, globalised economy, encouragement to the non-

Malay dominated private sector to invest in the economy, freedom to import and export, to transfer funds to and from abroad. In general, economic opportunities have given to everyone a stake in the country. The tremendous non-Malay contribution to the building of the economic infrastructure of the country has given the country prosperity as well as stability (p. 37).

### **Conclusion**

The scholarly discussion on The Federal Constitution of Malaysia has shown that the Federal Constitution is an agent for integrating communal relations among the multi-racial and multi religious Malaysians. The meetings and interactions among the races have resulted in a mutual agreement through the method stated by Sisk (1996) i.e. consultation and negotiation.

Apart from that, there are other provisions that uphold the tolerance among all races in Malaysia i.e. Article 153 of the Federal Constitution. The existence of the Federal Constitution of Malaysia definitely becomes a very important tie that can regulate harmonious relations among the multi-racial communities in Malaysia. The understanding and knowledge of constitution and law are the basic foundation to fulfil the need and aim for increasing good values and positive attitude among citizens in the country. To achieve this aim, emphasis should be given on the knowledge and understanding of the importance and examples of constitutional and statutory provisions so that it can benefit all races in the community.

To ensure individuals and communities are more disciplined and ethical in nation building, good and proper understanding of the Federal Constitution and the applicable law is very vital. As such, the knowledge relating to the constitution and the law should be taught so that every citizen possesses and practises good values. On that note, we must also recognise diversity as one asset to share the same fate in the government of the day. Among the measures to be taken by all people in our community are strengthening social relations, reducing ethnicity boundaries, and practising integration in the mission of unity to produce one race known as Malaysian. These measures are in line with what Islam enjoins that is tolerance in religion, living together and communal relations. As such the guide from the Federal Constitution should be relied on in realising unity in Malaysia.

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