

The Constitutional Basis For National Unity – Nation-Building In A Plural And “Divided” Society

*Emeritus Prof. Datuk Dr Hj Shad Saleem Faruqi
Emeritus Professor of Law at UiTM*

INTRODUCTION

In less than two months it will be 55 years of independence. The time is ripe for an examination of the theory and reality, the promise and performance of our Constitution – our document of destiny – on the issue of national unity.

Does our Constitution divide us or does it provide workable arrangements for our multi-hued nation to live together in peace and harmony?

Let it be said that our dazzling diversity is both an asset as well as a liability. It necessitates reconciliation of conflicting interests. As in other plural and “divided” societies, it poses special challenges for forging and preserving national unity.

Melting pot ideology: In some countries, the “melting pot” ideology is employed to create common bonds. This involves the effort, either by force or through encouragement, for people of diverse backgrounds to come together, submerge their distinct identities in something bigger and evolve a new personality.

In many Southeast societies like Thailand and Indonesia this “melting pot” technique has brought diverse people together to build a united nation with a distinct personality. For instance in Indonesia there is a strong emphasis on a common language, a common ideology (the *pancasila*) and the adoption of indigenous, “Indonesian” names by people of various ethnicities.

Working with a mosaic: The other model is that of a mosaic or a rainbow. This involves the recognition that the law cannot by force extinguish the special bond that a substantial number of people in every country have towards their religion, race, region, culture, language or tribe.

Efforts to promote a national identity should involve the recognition that unity cannot mean sameness. It has to be a unity in diversity. We can all be friends – but only in spots. In other areas where we do not see eye to eye, we have to live and let live; permit diversity and differences and to tolerate these differences even if we do not appreciate them.

The multi-ethnic leaders of Merdeka, especially Tunku Abdul Rahman, at whose resting place we meet today, settled for the mosaic approach.

Though nobody nominated the forefathers of our Constitution for the Nobel Peace Prize, actually they deserved one – not for ending a war but for

creating the conditions in which a dazzlingly diverse people could live together in peace, prosperity and harmony. Among the remarkable measures they adopted were the following:

- The various communities were allowed to maintain their distinct ethnic identities, cultures, religions, languages, lifestyles, dresses, foods, music, vernacular schools etc.
- Political parties, business and cultural associations were allowed to be organized on ethnic lines so much so that Malaya (later Malaysia) began its tryst with destiny looking a little bit like a rainbow with colours that are separate but not apart.
- At the same time, the economy was used to unite the disparate racial groups. Entrepreneurship was encouraged and minority communities were allowed to provide leadership in the economic area and to soar to the height of their abilities. This achieved twin objectives: it succeeded in developing the economy. It gave to every community a stake in the country.
- In view of the identification of race with economic function and the concentration of wealth in the hands of powerful minorities, an ambitious programme of peaceful social engineering was written into Article 153 of the Constitution. The Government did not expropriate the wealth of one community to bestow it on another as happened in Kenya, Uganda and Zimbabwe. It embarked on a pragmatic expansion of opportunities to give to every community its share of the pie.
- Barring a short period after 1969 when ethnic practices like lion dances were not permitted, and forced integration was experimented with, the overall effort of the last 55 post-independence plus two pre-Merdeka years has been to find some areas of cooperation and to allow distinctiveness in other spheres of existence.

Some success has indeed been achieved to discover that which unites us and to tolerate that which divides us. Recently we scored fairly well on the World Peace Index, being ranked 19 out of 153 states evaluated.

LEGAL BASIS FOR INTER-COMMUNAL HARMONY AND MODERATION

The Merdeka Constitution was a masterpiece of compromise, compassion and moderation.

In recognition of the fact that Malaya was historically the land of the Malays, the Merdeka Constitution incorporated a number of features indigenous to the Malay archipelago, among them:

- the Malay Sultanate (Article 71).
- Islam as the religion of the Federation but with freedom to other communities to practise their religion in peace and harmony (Article 3).
- The existence of Syariah laws and Syariah courts to deal with limited areas enumerated in the Constitution but with a clear provision that

Syariah courts shall have no jurisdiction over non-Muslims (Ninth Schedule, List II, Para 1)

- the grant of a “special position” to the Malays and (in 1963) to the natives of Sabah and Sarawak (Article 153)
- Malay reservation lands (Article 89)
- Bahasa Melayu as the official language for all official purposes but with freedom to other communities to preserve their languages and to use them for non-official purposes (Article 152)
- special protection for the customary laws of the Malays and (since 1963) the natives of Sabah and Sarawak (Article 150(6A))
- weightage for rural areas (which are predominantly Malay) in the drawing up of electoral boundaries (Twelfth Schedule)
- reservation of some top posts in the State executive for Malays
- legal restrictions on preaching of other faiths to Muslims (Article 11(4)), and
- procedural restrictions (in most State laws) against apostasy by Muslims.

However, the Malay-Muslim features are balanced by other provisions suitable for a multi-racial and multi-religious society. The Constitution is replete with safeguards for the interest of other communities. Notable features are as follows:

- Citizenship rights are granted on a non-ethnic and non-religious basis (Articles 14-19). The concept of *jus soli* was part of the Constitution in 1957 and was used to grant citizenship to hundreds of thousands of non-Malays. However *jus soli* was removed from the Constitution in 1963.
- The electoral process permits all communities an equal right to vote and to seek elective office at both federal and state levels. Race and religion are irrelevant in the operation of the electoral process (Article 119).
- The chapter on fundamental rights grants personal liberty, protection against slavery and forced labor, protection against retrospective criminal laws and repeated trials, right to equality, freedom of movement, protection against banishment, right to speech, assembly and association, freedom of religion, rights in respect of education and right to property to all citizens irrespective of race or religion (Articles 5-13).
- At the federal level, membership of the judiciary, the Cabinet of Ministers, Parliament, the federal public services and the special Commissions under the Constitution are open to all irrespective of race, religion or gender.
- Education is free at the primary and secondary levels and is open to all irrespective of race or religion. However, university education is subjected to strict quotas (Article 153).
- To open up educational opportunities for non-Malays, private schools, colleges and universities are allowed.
- Foreign education is available to whoever wishes to seek it.

- Government education scholarships are given to many non-Malays though this is an area where a large discontent has developed over the proportions allocated.
- Even during a state of emergency under Article 150, some rights like citizenship, religion and language are protected by Article 150(6A) against easy repeal.
- The spirit of give and take between the races, regions and religions is especially applicable in relation to Sabah and Sarawak.
- Even where the law confers special rights or privileges on the Malays and the natives of Sabah and Sarawak, there is concomitant protection for the interests of other communities. For example though Islam is the religion of the Federation, Malaysia is not a full fledged Islamic state (Article 3(4)).
- The syariah does not apply to non-Muslims.
- All religious communities are allowed to profess and practise their faiths in peace and harmony. State support by way of funds and grant of land is often given to other religions. Missionaries and foreign priests are allowed entry into the country. Every religious group has the right to establish and maintain religious institutions for the education of its children.
- Though Bahasa Melayu is the national language for all official purposes there is protection for the formal study in all schools of other languages if 15 or more pupils so desire, legal protection for the existence of vernacular schools and legal permission to use other languages for non-official purposes.
- Though Article 89 reserves some lands for Malays, it is also provided that no non-Malay land shall be appropriated for Malay reserves and that if any land is reserved for Malay reservations, an equivalent amount of land shall be opened up for non-Malays.
- Alienation of or grant of Temporary Occupation Licences over state land to non-Malays is not uncommon.
- Article 153 on the special position of Malays is hedged in by limitations. First, along with his duty to protect the Malays, the King is also enjoined to safeguard the legitimate interests of other communities. Second, the special position of the Malays applies only in the public sector and in only four prescribed sectors and services. Third, in the operation of Article 153, no non-Malay or his heir should be deprived of what he already has. Fourth, no business or profession can be exclusively assigned to any race. No ethnic monopoly is permitted. Fifth, Article 153 does not override Article 136. Quotas and reservations are permitted at entry point but once a person is in the public service he should be treated equally.

POLITICS OF ACCOMODATION

In addition to the above legal provisions, the rainbow coalition that has ruled the country for the last 55+2 years is built on an overwhelming spirit of accommodation between the races, a moderateness of spirit and an absence of the kind of passions, zeal and ideological convictions that in other plural societies have left a heritage of bitterness.

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 non-Malay contribution to the building of the economic infrastructure of the country has given the country prosperity as well as stability.

Culturally the country is a rich cultural mosaic. Secularism and religion live side by side. Mosques and temples and churches dot the landscape. Despite the prohibitions for Muslims, non-Muslims are not forbidden to take alcohol, have gambling permits, rear pigs and dress in their own or the permissive ways of the West.

NEED TO REVIVE THE SPIRIT OF 1957

Sadly dark clouds loom over the horizon.

- There are problems about planning permissions for places of worship;
- Occasionally temperatures rise because of forced relocation of some religious sites, many of them without proper planning permissions;
- There are many painful disputes about the custody, guardianship and the religion of the child in a non-Muslim marriage when one party converts to Islam;
- The ban (now lifted) on Bibles in the Malay language created great bitterness;
- The demand to use the term 'Allah' in Christian sermons has hurt many Muslims;
- Missionary work of evangelists from abroad arouses anger not only here but in many countries;
- The infrequent but highly explosive issue of Muslim conversion out of Islam provides fodder for rumour-mongers;
- The contentious issue about the Islamic state and application of *hudud* has driven a wedge not only between the Muslims and the non-Muslims; even the Muslims are divided. Many say "we are doing all right". "Why is there a need for such a fundamental change"?
- The overzealousness of some public servants in the enforcement of Article 153 quotas and proportions hurts those left out;

- Recently, many unpunished acts of incitement to religious and racial hatred in public speeches and internet discussions have aroused worry that hate-mongers have become mainstream.

For many decades till the 90s we were regarded by many Asian and African societies as an exemplar of how a divided, plural society can survive and thrive politically, economically and socially.

Since the 90s, however, not all is well. Racial and religious polarization has reached alarming levels. We have become a “nation of strangers”. It is time, therefore, for re-building ethnic bridges and dismantling ethnic walls; for healing and reconciliation; and for developing a vision of unity.

As we approach 55 years of political freedom what can we do to restore moderation, to recapture the spirit of 1957 and to reintroduce our winning formula for living together? The task is very large. I will mention just two points.

First, we need to improve knowledge of the Constitution’s glittering generalities, especially its provisions on inter-ethnic relations. If we read about the making of the Constitution, we will see that by far and large the forefathers of our Constitution were animated by a remarkable vision and optimism of a shared destiny among the various peoples of the Peninsula. “Out of Many, One” was perhaps their creed. Their life was enlightened by a spirit of accommodation, compassion and tolerance. They abjured ideological purity of the political, economic and religious type. They walked the middle path of moderation.

They gave to every community a stake in the nation. No group received an absolute monopoly of power or wealth. Every community received something to relish and cherish. Pluralism was accepted as a way of life and the unity that was sought was a unity in diversity.

The Constitution, even in its “ethnic provisions” sought to avoid extreme measures and provided for a balance between the interests of the “Bumiputera” and “non-Bumiputera” communities.

I believe that the lack of familiarity with the basic charter’s provisions even within the top echelons of the civil service, the police, parliamentarians and politicians is contributing to the present state of unease. This can be remedied. We can restore the spirit of 1957.

For this we need leadership. “Leaders of substance do not follow opinion polls. They mold opinion, not with guns or power or position but with the power of their souls”. In the USA, Lincoln freed the slaves despite hostile reaction from the South. Tito kept Yugoslavia together. Nasser united the Arabs. Gandhi and Nehru in India rejected a Hindu theocratic set-up because of the presence of large minorities including the Muslims.

If we have to go forward as a united nation, we need to go back to the spirit of moderation, accommodation and compassion that animated the body politic in 1957.

Wassalam.