



The peace and harmony that Malaysia has enjoyed over the last six decades is partly grounded in the glittering generalities of its Constitution.

Constitution as a guide for humanity

By SHAD SALEEM FARUQI

AS we celebrate 63 years of Merdeka, 63 years of our Constitution and 50 years of the Rukun Negara, it is worth remembering that our tradition of peace, harmony and economic prosperity is partly grounded in the glittering generalities of our document of destiny.

With all its flaws, our Constitution is 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 Islam as the religion of the Federation, the Malay Sultanate, the special position of the Malays for affirmative action measures, Malay reserve lands, Bahasa Melayu as the official language, weightage for rural areas in the drawing up of electoral boundaries and restrictions on preaching of any faith to Muslims to forestall threats to public order.

In 1963, the Constitution affirmed the special position of the natives of Sabah and Sarawak by extending the affirmative action of Article 153 to them, giving recognition to their native customs, granting favourable representation to Sabah and Sarawak in the Federal Parliament and entrenching special executive, legislative, judicial and financial powers for Sabah and Sarawak in our Federal set-up.

At the same time, the "ethnic features" of the Constitution are balanced by provisions suitable for a plural society.

The various communities are allowed to maintain their distinct ethnic identities, cultures, religions, languages, lifestyles, dresses, foods, music, vernacular schools etc. Political parties and business and cultural associations are allowed to be organised on ethnic lines.

Citizenship rights are granted on a non-ethnic and non-religious basis. The electoral process permits all communities an equal right to vote and seek elective office.

The chapter on fundamental liberties, with some exceptions, grants rights to all citizens irrespective of race or religion.

At the Federal level, membership of the judiciary, Cabinet, Parliament, public services and special Commissions is open to all.

Education is free at primary and secondary levels and is available to all.

Even where the law confers a special posi-



Under Malaysian law, there is concomitant protection for the interests of all communities in the country.

tion 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, the Syariah does not apply to non-Muslims.

All religious communities are allowed to profess and practise their faiths in peace and harmony. 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.

Though Article 89 reserves lands for Malays, it is also provided that no non-Malay land shall be appropriated for Malay reserves.

Article 153 on the special position of Malays is hedged in by limitations. Along with his duty to protect the Malays and natives, the King is also enjoined to safeguard the legitimate interests of other communities.

The special position provisions apply only in the public sector and in only four prescribed sectors and services: public service employment; licences and permits; post-sec-



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ondary education; and scholarships, training facilities etc. In these areas, "reasonable" and "necessary" reservations and "proportions" are permitted.

Article 153 does not override Article 136, whose implication is that reservations are permitted at entry point but once a person is in the public service he should be treated equally.

Sadly, the spirit of accommodation that permeated the drafting of our Charter is being ignored by some politicians and activ-



ists. We need to engage with them and remind them that learning to live with each other in peace and justice is the true mark of civilisation.

Malaysia was blessed that in its first four decades, the world regarded her as an exemplar of intercommunal harmony.

Regrettably, we have regressed. Extremism has become mainstream and moderation is regarded with suspicion. There is a need to improve constitutional literacy and to restore the spirit of 1957 and 1963.

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