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Special Rights in the Malaysian Constitution and the Framers’ Dilemma, 1956–57

Joseph M. Fernando

The provision for Malay special privileges in the federal constitution raised considerable debate among the framers and the political community in Malaya (now Malaysia) during the drafting of the constitution in 1956–57. Article 153, which provides certain preferences to Malays in the award of business licences, scholarships and employment in the public service, was an unusual provision as it conflicted with the principle of equality enshrined in the constitution. Yet, there was general acknowledgment among the political organisations that the Malays badly needed assistance to address their economic backwardness. The dilemma the framers faced was in reconciling how these safeguards could be framed without negating the principle of equality in Article 8 and the constitutional rights of the non-Malays. Article 153 has been a source of much debate over the last 50 years. Earlier studies have not been able to examine the classified primary constitutional documents to ascertain fully the intentions of the framers. This article, drawing mainly from declassified primary constitutional documents and Alliance Party papers, analyses the evolution of the article through the various drafting stages. It shows that Article 153 was intended by the framers, particularly the Alliance Party, as a temporary and transitional provision with an unwritten understanding that there would be a review of the special privileges after independence and their discontinuance after a certain number of years.

Constitutional provisions according certain special rights to minority groups or backward communities are evident in several commonwealth constitutions. These special rights, often in the form of socio-economic privileges which include preferential treatment in public service employment, award of business licences and education scholarships, but which also include reservations of seats in the legislatures and in universities,