

RESERVATION FOR ECONOMICALLY WEAKER SECTIONS IN INDIA AND RESERVATION IN MALAYSIA: A STUDY

Dhanya C.S

Research Scholar, SRM School of Law, SRM Institute of Science and Technology,
Kattankulathur, Chennai, Tamil Nadu -603 203

Dr. N.Balu

Research Guide and Former Dean, SRM School of Law, SRM Institute of Science and
Technology, Kattankulathur, Chennai, Tamil Nadu – 603 203

Abstract

Affirmative action policies have been adopted by most countries to address various kinds of inequalities due to caste, religion, gender, ethnicity, and economic basis. Social Justice embedded in most world constitutions aims to create a more egalitarian society. Reservation is adopted to reduce the growing disparities between rich and poor and to uplift societies where discrimination exists out of caste, race, gender, and religion. India and Malaysia had included reservation policies in their constitutions and had modified the policy to meet the growing demands of its citizens. Reservation policy in India originally focused on ensuring employment, education, and political representation for scheduled castes, scheduled tribes and socially and educationally backward classes. Reservation for the poor among the general category was introduced through the One Hundred and Third Constitutional Amendment, 2019 in India. Malaysia had been providing reservations in education, employment, and business sectors for native Malays who were economically disadvantaged than the migrant population of Malay Chinese and Malay Indians. This article aims to compare the reservation policies in Malaysia and Reservations for economically weaker sections in India.

Keywords: Social Justice, Reservation, Malaysia, India, Economically Weaker sections.

Introduction :

India and Malaysia are two prominent Asian countries that have a lot of similarities and affinities in many ways. Both have the same colonial legacy, surplus labor, and parliamentary democracy. India became independent in 1947 and Malaysia in 1957.[1] India is in the lower class of middle-income countries with a GDP of \$1499. The reservation policy in India has been criticized for its complexity and for perpetuating caste-based categorization. However, it has also been credited with facilitating social mobility and reducing inequality among marginalized communities. Reservation policies have enabled individuals from historically disadvantaged backgrounds to access education, secure jobs, and participate in public life. Additionally, reservation policies have contributed to political empowerment, giving marginalized groups a voice and representation in decision-making processes. The reservation system in India operates through a quota system, where a certain percentage of seats in educational institutions, government services, and electoral constituencies are reserved for different categories of disadvantaged groups.

These reservations are based on criteria such as caste, tribe, and economic backwardness. Discrimination only on the grounds of religion, race, caste, sex, place of birth, and descent is prohibited in India[2] similarly, Malaysia prohibits discrimination on gender, descent, race, and descent.[3] Reservation is adopted as one of the important mechanisms in both countries to promote social justice. Social justice focuses more on fairness, especially in resources that an ideal society must provide equal access to wealth, opportunities, and social privileges.

Reservation Policy in Malaysia

Malaysia has 13 states and three federal territories. As of July 2023, the Multiethnic Malaysian population comprises 70.1 % Bumiputeras, 22.6% ethnic Chinese, and 6.6% ethnic Indians. [4] Malaysia with a GDP per capita of 11,000 \$ tops the list of middle-income countries. The liberalized services sector, the manufacturing sector, agricultural sector made positive contributions to GDP growth. [5] The impressive economic growth of nearly 6.5 % over five decades is primarily the result of its economic diversification. Various laws and policy measures facilitated manufacturing in the country saw the change from a rubber and tin-producing economy to palm oil and other products of agriculture. Malaysia is considered to be an industrialized country although not a fully developed country.

Malaysia was subjected to foreign control by various European powers such as the Portuguese in 1511, the Dutch in 1641, and the British in 1824.[6] Several Indians and Chinese people were transported to Malaysia by Britishers to get control over the resources of rubber and tin. The sharp economic divide between native Malays and immigrants led to the reservation policy for Malays since native Malays were economically far behind the rest of the groups. [7]

Article 8 of the Constitution of Malaysia declares that "all persons are equal before the law and entitled to equal protection of the law". Article 8(5)(c) of the Malaysian Constitution safeguards special protection in the equality clause. [8] Article 89(6) deals with land reservation for native Malays. Article 153 deals with the reservation of quotas concerning permits, and services for Malays and the natives of Sabah and Sarawak. In Malaysia, the reservation policy is known as the Bumiputera policy, designed to benefit the indigenous Malay population and other indigenous communities. The Bumiputera policy was introduced to address historical imbalances created by the British colonial rule, which favored the Chinese and Indian communities economically. The economic ownership of bumiputras was only 2.4% although they were 50% of the population. Malaysian Chinese who comprised 33% of the population owned 34% of economic assets and Malay Indians who comprised 8% owned 1.1% of economic wealth. Foreigners owned 66% of the wealth. The policy aims to promote the socio-economic development and representation of the Bumiputera communities in various sectors. The Bumiputera policy includes measures such as quotas for university admissions, government contracts, and public-sector employment. The policy also encourages the ownership of property and businesses by Bumiputera communities. The goal is to reduce the wealth gap and provide equal opportunities for all communities. [9]

A large-scale program including setting up a chain of junior colleges throughout the country and sending tertiary education students overseas, for enrolment in the local universities instituting quotas and granting scholarships. The government of Malaysia amended the constitution after the ethnic riots of 1969 in a manner that was able to increase just after three years the percentage from 39.7 percent to 52.7 percent in the university programs in the year 1970. [10]

Malaysia implemented the New Economic Policy (NEP) in 1971 to redress economic imbalances between the country's ethnic groups, primarily the Malays who are categorized as the Bumiputera ("sons of the soil"), and the non-Malay ethnic groups. The NEP aimed to eradicate poverty and restructure society to reduce the economic disparities between these ethnic groups. In addition to educational and employment opportunities, the NEP also included measures such as redistribution of wealth, ownership of corporate equity, and access to government contracts. The NEP implemented a system of quotas, where a certain percentage of positions in educational institutions, government services, and other sectors were reserved for Bumiputera. Unlike India's reservation policy based on caste, Malaysia's affirmative action policies are based on ethnicity.

Malaysian Reservation Policy was a time-bound and target-bound policy that was initiated twenty years ago with a focus to achieve a 30 percent target. A large-scale program including setting up a chain of junior colleges throughout the country and sending tertiary education students overseas, for enrolment in the local universities instituting quotas and granting scholarships. National Economic Consultative Council (NECC) a consultative body was established comprising 150 members from diverse backgrounds that included members from ruling political parties, opposition parties, chambers of commerce, corporate leaders, government officials, academicians, professionals, an equal number of bumiputeras and non bumiputeras to evaluate the outcome of the policy. [11] The percentage of indigenous Malay corporate wealth increased to 18% against the target of 30%. [12] It also had an indirect effect of creating bumiputera business class who were politically dominant leaving other bumiputeras who were still poor with less representation. [13] It also served the purpose of creating awareness that all sections have a place in Malaysia fostering national unity. The government attempted to emphasize that stability in economic development promotes national unity. However, Malay land reservations were insignificant since they confined Malays in economically backward locations with traditionally bound occupations. As per Malaysian Economic Statistics, Absolute poverty had declined from 49.3 percent in 1970 to 17.3 percent in 1987. [14]

In 1991, the National Economic Policy was replaced by the National Development Policy (NDP) as the broad new national project during 1990 and 2000. Unlike the National Economic Policy, the emphasis of the National Development Policy was the eradication of hard-core poverty. The National Development Policy was replaced by the National Vision Policy (NVP) from 2000 to 2020. These three policies have similar objectives and are collectively referred to as National Economic Policy (NEP). [15]

Impact of Malaysian Reservation Policy :

Malaysia has emerged as a successful model for strong political will and the rate of rural poverty got reduced and overall poverty decreased from 49 percent to 17 percent. [16]The main goal of NEP was the unity of the nation, nation-building, and harmony. To achieve this aim further two goals were set which included the eradication of poverty irrespective of race and the reconstruction of society in a way to eradicate the identification of race with its economic function. Earlier bumiputras were identified as landless laborers, Chinese with Industry and commerce, and Indians were identified as laborers and service providers. The NEP set some milestones which are to raise Bumiputeras economic ownership from 2.4% to 30%, Malay Chinese from 34% to 40% and to reduce ownership of foreign firms from 66% to 30%. All NEP goals were to be reached in the context of economic growth. If Bumiputera ownership is to be increased, it is not by taking away wealth, income, jobs, or business of other groups but by rapid economic growth. The first goal was to be achieved by raising of productivity of farmers through land settlement, land development, and rehabilitation. Provision of health, education, electricity and water supply. Absorption of rural households in the modern sector through nonagricultural development. For the realization of the second goal, some targets were set. The bumiputeras should own and manage at least 30% equity in the corporate sector, for other Malaysians the limit was 40% while for foreigners it was 30%. For equitable income and redistribution of wealth, the creation of bumiputeras entrepreneurs and a business class was necessary. Some other targets of the policy were to give corporate equity to bumiputras by law by providing employment quota in the private sector, quota in business licenses, and government contracts. Quotas are to be given in state universities, quotas in schools, colleges, and scholarships, and quotas in public sector employment. Malaysia implemented this affirmative action policy aggressively and got spectacular results in a short period. By 1990 the poverty rate was reduced to 17 % from 49.3 % in 1970. Absolute poverty declined from 50% to 6.85%. This poverty reduction was among all ethnic groups. [17]There was more cooperation among various ethnic groups. This shows that Malaysia has made substantive progress in the direction of achieving the main aim of national unity.

The reservation policy in Malaysia has also faced criticisms and challenges. Critics argue that the policy has perpetuated a system of ethnic favoritism and led to a brain drain of non-Bumiputera professionals. There are concerns that the policy may stifle meritocracy and hinder the country's competitiveness in a globalized economy. Despite these criticisms, Malaysia's affirmative action policies have succeeded in improving the socioeconomic standing of the Bumiputera community, as evidenced by the reduction in poverty rates and increased participation in higher education and government services. Malaysian perspective plan makes it clear that while absolute poverty is declining in Malaysia, relative poverty is expected to be a bigger issue in the future. [18]

EWS reservation policy in India

The 103rd Constitutional Amendment sought to promote the educational and economic interests of the weaker sections of society. The 103rd amendment inserted two provisions Articles 15(6) and 16(6) thereby making 10 % reservation for economically weaker sections in the general category. It provides reservations for people who have an annual income of less than 8 lakh people who own

less than five acres of farmland or people who have a house less than 1,000 sq. feet in a town (or 100 sq. yards in a notified municipal area). This amendment also resulted in increasing the overall reservation limit to 60%. A plethora of judgments [19] of the apex court highlighted the importance of economic basis even though economic criteria as a sole basis was declared invalid in the landmark Mandal Commission Case. [20] Weak economic background leads to weak educational and social status. A socialist democratic welfare state is obliged to eradicate poverty as per Articles 46, 51 C and 253 and to ensure social and economic justice. Parliament can extend special protection to any deserving sections since the constitution emphasizes distributive justice. Supreme Court of India upheld the constitutional validity in *Janhit Abhiyan V. Union of India* [21] where all five judges unanimously agreed that the constitution permits reservation solely on economic criteria. Two judges dissented regarding the breach of the 50% ceiling limit of reservation since that could affect the rule of equality and lead to further issues and excluding the poor from communities already included under the reservation quota.

Comparison and Contrast: Although both India and Malaysia have implemented reservation policies, there are key differences in their objectives, implementation, and impact.

1. **Objective:** Though reservation policy in India originally targeted historically marginalized caste groups, the inclusion of economically weaker sections has enhanced social justice. Reservation in Malaysia focuses on promoting the socio-economic development of indigenous communities to reduce the economic disparities between ethnic groups. The reservation policy in Malaysia was to protect minorities such as Orang Asli and Natives of Sabah and Sarawak and to uplift the economic conditions of the native Malay population whereas the objective of the reservation is limited to a 10% quota in education and public employment for economically weaker sections in the general category.
2. **Implementation:** In India, reservations are implemented through quotas, which specify a certain percentage of seats reserved for different categories in educational institutions and government jobs. The Constitution of Malaysia provided special rights in the form of federal scholarships, public employment, Malay reserve land, licenses, and permits.
3. **Scope:** In India, reservations for Economically weaker sections are narrower since it is only limited to 10% of seats in the general category in education and government jobs. In contrast, Malaysia's Bumiputera policy primarily focuses on ethnicity and indigenous status, and to improve rather than economic criteria.
4. **Duration:** Reservation policies in India are open-ended and continue until social inequalities are effectively addressed. In contrast, the Bumiputera policy in Malaysia was initially intended to address imbalances for 20 years from 1970 to 1990. However, the policy has been extended, and its duration remains subject to periodic review.
5. **Impact:** Reservation policies in India have had a significant impact on social mobility and political representation for historically disadvantaged communities. However, challenges such as

limited access to quality education and economic opportunities persist. The Bumiputera policy in Malaysia has contributed to the increased representation of indigenous communities in various sectors but has also sparked debates around inclusivity and fairness to other ethnic groups.

6. Judicial Review: The constitutional validity of the EWS reservation has been upheld by the constitutional bench of the Supreme Court in *Janhit Abhiyan v. Union of India*.^[22] Unlike India, Affirmative action policies are rarely been challenged before the courts. However in the famous case of *Merdeka University Berhad v. Government of Malaysia*,^[23] which primarily dealt with issue of language under Article 152 allowed vernacular tamil and chinese schools to co-exist with native language schools. This judgment is significant since it demonstrates multi-cultural identity and national integration. In *Ghasali v. Public Prosecutor*,^[24] which dealt with the direction made by the minister to the licensing board that only driver of malay race should drive such vehicle. This direction was issued to increase participation of malays in the road transport industry. But this direction was held ultravires the parent act that is Road Traffic Ordinance (1958) that only gives power to consider applications for license and not to impose conditions after the issuance of license. The extend and legitimacy of privileges under Article 153 had never been litigated.^[25]

Conclusion

Malaysia continues to provide reservations to the politically dominant native population to eradicate poverty and ensure social justice. Malaysian reservation policy has transformed the socio-economic structure of the country in a short period which shows that a strong political will resulted in economic growth. Growth that is inclusive and equitable with affirmative action policy. The success of the Malaysian reservation policy is due to the clear and coherent policy framework, ensuring gain among all groups, a strong statistical system to monitor the inequalities between all groups and flexibility in the implementation and enforcement of policies. India for long denied reservation to its economically weaker sections in the general category since there was no constitutional provision. The introduction of 103rd Constitutional amendment has taken into account the needs of economically weaker sections in the unreserved category thereby enhancing social justice. Like Malaysia, India has to adopt a time-bound and target-based approach and revise the income cut-off periodically. To ensure social justice implementation of balanced policies and proper society welfare schemes is a much needed one.

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