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An Analysis of the Constitutional Principles of Equality and Affirmative Action vis-à-vis Employment in Malaysia

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Received: 18 August 2023

Accepted: 09 October 2023

Abstract: Malaysia's diverse and multicultural society poses unique challenges in achieving a balanced and inclusive employment landscape that upholds both the rights and needs of individuals. In this regard, constitutional principles of equality serve as the cornerstone for promoting non-discrimination in employment across the public and private sectors. The concept of equality embedded in the constitution today, on the other hand, is anchored in a complicated historical context that has greatly shaped the nation's path. Hence, guaranteeing the effective application of the principle while taking into account the individual rights and needs of every community remains a difficult challenge. This is because affirmative action policy is also embedded in the constitution that aims at protecting the Bumiputera. Hence, understanding the historical context behind the establishment of the constitution is of utmost importance as it allows Malaysians to appreciate its unique features that seek to strike a delicate balance between the rights and needs of the people. This study which is doctrinal in nature, attempts to examine Malaysia's constitutional equality principles, with a special emphasis on understanding how to strike a balance between individual's rights and needs in the context of employment. This study tries to uncover the issues and challenges that impede the equitable implementation of the equality principle in the employment sector by evaluating historical events, existing legal frameworks, policies, and practices.

Keywords: employment; affirmative action; equality; constitution; balance

Introduction

The constitutional principle of equality in employment holds great significance, particularly in a country as diverse as Malaysia, with its multitude of religions, cultures, and races. The Malaysian population is composed of several major ethnic groups, including Malays (69.9%), Chinese (22.8%), and Indians (6.6%) (Department of Statistics Malaysia, 2022a). Additionally, there are significant populations of indigenous communities contributing to the country's rich tapestry of diversity. Hence, it is pertinent for the Constitution to strike a balance between protecting the rights and needs of the majority and at the same time, maintaining the interests of the minority communities. The Constitution being the foundation of the legislations and policies in Malaysia acknowledges equality as a basic concept and this is enshrines it in Article 8, emphasising the right to equal treatment to everyone which further consolidate the notion of non-discrimination. While the Malaysian constitution recognises equality as a fundamental human right, its implementation is not without challenges, especially when affirmative action came into the picture.

The affirmative action policy as addressed in Article 153, aims to protect the Bumiputera (Malays and other indigenous communities) population while also preserving the legal rights of other communities.

Although the Federal Constitution defines the phrases “Malay” and “natives,” it is worth noting that the term “Bumiputera” is not defined. This policy rooted in historical context, has generated major discussions and debates amongst politicians and scholars on its impact on equality, particularly within the employment sector. In general, as far as employment in concern, all Malaysians are given equal employment opportunities. The provisions of the Employment Act of 1955 regulating statutory benefits and labour protection apply to all workers, regardless of gender, religion, or national origin. However, as a result of British colonial “divide and rule policy”, economic disparity between races persists to this day. Since Malaysia gained independence in 1957, the Bumiputera have consistently faced lower average income levels compared to other communities; Chinese and Indian minorities (Khalid & Yi, 2019). This research seeks to shed light on the effectiveness of constitutional principles, evaluate the impact of affirmative action policies on employment, and propose recommendations for promoting greater equality and inclusivity in the Malaysian workforce through an examination of historical events, legal frameworks, and contemporary debates.

Methodology

For this research, a brief doctrinal qualitative study was adopted. The most often utilised research methodology in legal studies is doctrinal or library-based research. This approach focuses on examining the law in specific contexts, with an emphasis on the development and application of legal principles primarily through statutes, international treaties, and decided case law (Salim Ibrahim Ali et.al, 2017). This approach involves conducting an analysis and interpretation of the constitution primarily on Article 8 (equality) and Article 153 (affirmative action) of the Federal Constitution. The research also examines the historical background of these provisions to gain a better understanding of their application especially at present. Further, the research also looks at sources such as academic journals, books, and relevant websites to explore the perspectives on the topic of equality and affirmative action. The study is also undertaken qualitatively, with textbooks, academic publications, and websites functioning as primary sources of knowledge.

Result

1. Weaving the Constitutional Tapestry: An Overview

Historically, the Malay states were independent and sovereign before British intervention before the British intervention. The British intervened the Malay Peninsula through commercial trading with the assistance of the local sultanates in the late 18th century. Through treaties, the British gradually increased their influence and gained control over several Malay states. This is evident from the signing of the *Pangkor Treaty* in 1874 that marked the beginning of the British occupation of the Malay states (Merican & Mohamed Amin, 2011). This agreement that was made between British and the Sultan of Perak sought to establish British authority over the Malay states through the appointment of the British Resident in the Malays states to advise the Malay rulers over internal affairs. During the British occupation, the Malay states were divided into the Federated Malay States and the Unfederated Malay States. In the Federated Malay States, including Perak, Selangor, Negeri Sembilan, and Pahang, the British applied the Residency System. Through this system, British Residents were assigned as advisors to the Malay rulers given the former indirect control over the administration. In contrast, British advisors were appointed in the Unfederated Malay States, such as Johor, Kedah, Perlis, and Terengganu. They had a similar role in giving advice to the Malay rulers (Ali Mohamed, 2014).

The British once again resumed powers over the Malay states with the establishment of the Malayan Union in 1946 after the second world war. According to Abd Rahim, one of the goals of the British in establishing the Malayan Union was to alleviate hunger that was prevailing and strengthen their ties with the locals (Abd Rahim et.al., 2013). It is worthy to note that the Malayan Union was a proposal made by the British to restructure the administration of the Malay states. By forming the Malayan Union, the British sought to centralise their power over the Malay states which was divided into different states previously (Faruqi, 2008). The sovereignty and special position of Malay rulers were substantially eroded due to the establishment of the Malayan Union. Moreover, the Malayan Union was also resented by the Malaya due to proposal on citizenship policy. The controversial proposal aimed at granting citizenship rights to all residents, without

distinguishing between the indigenous Malays and the immigrant Chinese and Indian communities. The Malay rulers and nationalist movements strongly opposed this proposal as they feared that this idea would weaken the Malay rulers' powers and subsequently diminish the rights and privileges of the Malays who considered themselves as the son of the soil. Following this, the United Malay National Organisation (UMNO) was formed in 1946 to reject the ideologies brought by the Malayan Union. This represents the beginning of the UMNO as a prominent political party that aims to protect the Malays' interests. Essentially, the UMNO mobilised the Malay populace and galvanised opposition to the Malayan Union under the leadership of its founding president, Dato' Onn Jaafar (Hari Singh, 1998).

The British eventually replaced the Malayan Union with a new federation known as the Federation of Malaya in reaction to the significant oppositions by the Malays in relation to introduction of the principle of "jus soli" and the erosion of sovereignty of the Malay rulers' power through establishment of unitary government. The Federation of Malaya, created in 1948, restored the Malay rulers' powers while providing a framework for a limited self-government. Each Malay state retained its own Sultan or Ruler as the head of state under the Federation of Malaya Agreement. The agreement also defined the separate jurisdictions and powers of federal and state governments. Through the Agreement the concept of Malay special privileges, that recognised the Malays' position as the indigenous majority was initially introduced. The concept of self-government that provides the Malay states with some kind of autonomy in regulating the internal affairs was also established. These concepts serve as the groundworks for the establishment of the Federal Constitution in 1957.

Another important concept that is worth mentioning here is social contract. In fact, the social contract had an important role in developing Malaysia's constitutional structure, that greatly influenced Article 153 incorporated in the Federal Constitution. The concept of a social contract was developed during one of the negotiations among the major communities towards Malaysia's independence. It should be noted that the term social contract prompts a mixed response among different communities in Malaysia. The main purpose of the contract was to promote unity through the trade-off made between communities relating to citizenship and certain privileges to the Malays community who were economically deprived prior to independence. In essence, the contract served as the testament of diplomatic measures aimed at protecting the different interests of every community. Article 153 as it stands today recognised the Malays' special privileges while at the same time, other communities rights and interests are to be protected. This contract eventually formalised the affirmative action policies embedded in the Federal Constitution, balancing social and economic inequalities between races in Malaysia.

2. Article 8 of the Federal Constitution: Concept of Equality vis-à-vis Employment in Malaysia

Before delving into a broader discussion on affirmative action, it is crucial to acknowledge the constitutional principle of equality, which upholds the fundamental human right to equal treatment and non-discrimination. The provision further reinforces the fundamental principle that all individuals should not be discriminated based on race, religion, descent, place of birth or gender. The principle under article 8(1) is based on reasonable classification. This would mean that a person in one class should be treated the same as another person in the same class. It was highlighted in the case of *PP v Khong Teng Khen* [1976] 2 MLJ 166 where the Court said that a law must operate alike on all persons under like circumstance. Thus, A law is not required to operate on all persons in any circumstances and a law is also not required to be general in character and universal in application. Similarly in the case of *PP v Su Liang Yu* [1976] 2 MLJ 128 where the court said that no person shall be denied equality before the law or equal protection of the law, but Article 8 does not prevent Parliament from making a law based on or involving some classifications. Discriminatory law is good law if it is based on "reasonable" or "permissible" classification. The classification is founded on an intelligible differentia which distinguishes persons that are grouped together from others left out of the group. In addition the differentia has a rational relation to the object sought to be achieved by the law in question.

The classification may be founded on different bases such as geographical, or according to objects or occupations and the like. There must be a nexus between the basis of classification and the object of the law in question. This was further emphasized by the court in the latest decision on the above concept, in the case of *Danaharta Urus Sdn. Bhd v. Kekatong Sdn. Bhd* [2004] 2 MLJ 257, where it was held that absolute equality

does not exist within article 8(1) and the court stated that “Thus what Article 8(1) means is that there must be subjection to equal laws applying alike to all persons in the same situation. The validity of a law relating to equals can therefore only be properly tested if it applies alike to all persons in the same group. This can only be ascertained by the application of the doctrine of classification”. Therefore, in applying the test of intelligible differentia one need to identify whether the law was discriminatory, and the rational nexus of discrimination was allowed as long as it complied with the equal protection scrutiny (Ramalingam et. al., 2022).

The notion of equality that is specifically applicable in the public sector is supported by the landmark case of *Noorfadilla bt Ahmad Saikin v Chayed bin Basirun & Ors* [2012] 1 MLJ 832. This case serves as a significant legal precedent that must be a subjection to equal law, reinforces the understanding that the constitutional principle of equality under Article 8 primarily operates within the sphere of public sector employment, the defendants refused to allow a pregnant woman to be employed as a “*Guru Sandaran Tidak Terlatih*.” The decision holds that the discrimination on the basis of pregnancy is a form of gender discrimination. Unfortunately, this principle of equality did not extend to the private sector, where different considerations and practices may prevail. In the case of *Beatrice a/p At Fernandez v Sistem Penerbangan Malaysia & Ors* [2005] 3 MLJ 681, it has raised concerns since the courts took a restricted and literal view to the constitutional issue of gender discrimination that was addressed, as well as the provisioning of maternity-related rights in the Employment Act 1955. The respondent hired the appellant as a flight attendant under a collective agreement that governed the terms and conditions of her employment. The agreement's Article 2 (3) compels the flight attendant to quit upon pregnancy, and failing to resign provides the respondent the authority to terminate the appellant's service. When the appellant was terminated from service, she filed a claim in the High Court and appealed to the Court of Appeal, stating that the agreement was void inter alia; it is ultra vires to Article 8 of the Constitution because it was discriminatory in nature. The Federal Court, reaffirming the Court of Appeal's decision stated that the appellant must prove that the discrimination was done by the State as opposed from another individual or a private entity to successfully invoke Article 8 of the Federal Constitution.

The latest employment debate revolves around a request by the Malaysian Public Health Medical Association and the Malaysian Islamic Doctors Association urging the government to reconsider the recruiting process for new medical graduates within the Ministry of Health. The viewpoint given attempts to ensure permanent work for medical graduates, with a specific emphasis on alleviating professional unemployment among the Bumiputera. This plan, however, has aroused controversy in other areas, as it raises issues about justice, equal chances, and potential ramifications for employment dynamics in the healthcare sector (Pusat KOMAS, 2022). It is worth noting, however, that Article 8(2) of the Constitution begins, “Except as expressly authorised by this Constitution...”. This clause indicates that the Constitution itself allows for certain laws or regulations that may benefit certain groups while being regarded as harmful to others. This can be considered as positive discrimination that the Constitution specifically supports. The Constitution recognises the necessity for affirmative action measures to promote the socioeconomic growth of the Bumiputera.

3. The Origin and Rationale behind Affirmative Action Policies in Malaysia

By definition, affirmative action refers to policies or measures taken by governments to address marginalised people in a country. The major purpose of affirmative action is to eliminate discrimination and to encourage diversity, inclusion, and equitable representation in diverse fields such as education, employment, and commercial dealings. Affirmative action can be dated back to the early 1960s in the United States. The term was coined in a 1961 via an Executive Order 10925 issued by President John F. Kennedy to combat discrimination in federal government procurement. The directive obliged government contractors to take "affirmative action" to ensure that employment decisions were made on the basis of merit, not race, colour, or national origin. However, affirmative action measures became increasingly prominent during the administration of Lyndon B. Johnson. President Lyndon B. Johnson issued Executive Order 11246, which broadened the scope of affirmative action to include all government contractors and subcontractors. This ruling required these employers to implement affirmative action programmes to aggressively promote equal opportunity.

Affirmative action is a well-known recognised concept has been adopted in a number of countries throughout the world, including the United States of America, India, Indonesia, Taiwan, China, and others. In general, this concept is used in various situations that reflects an acknowledgment of the need to correct historical imbalances, promote social justice, and provide opportunity for underrepresented or disadvantaged groups (Faruqi, 2003). Examining the extensive implementation of affirmative action rules allows the public to grasp its importance and impact in fostering inclusivity and levelling the playing field on a global scale.

In South Africa, South Africa's abolition of apartheid and implementation of affirmative action were watershed moments in the country's history, aiming at removing institutionalised racial segregation and promoting equality. Apartheid refers to a government-enforced system of racial segregation and discrimination that lasted from 1948 to the early 1990s. It imposed tight racial classifications, assigned particular territories for specific racial groups, and restricted non-white rights and freedoms (Matambo, 2015). This system deepened the country's racial divisions, inequality, and economic inequities. It is interesting to note that following the democratic transition, the South African government implemented affirmative action measures to correct the inequities caused by apartheid. The purpose was to give equal opportunity for non-white South Africans, primarily black people, and to rectify historical inequalities. The affirmative action policies attempted to increase the involvement of formerly disadvantaged people in different aspects of society, such as education, employment, and company ownership. These programmes aimed to create a more representative and fair society by providing preference to historically disadvantaged groups in order to bridge economic and social imbalances. In fact, the South African government has introduced the Employment Equity Act, 1998 to promote equality and addressing discrimination in the workplace in effort to dismantle the apartheid system.

At present, the proportion of Malays in the civil service is more than 90% (Thomas, 2023). Historically, more than half of Malaysian households were impoverished after independence. Despite significant development rates in the 1960s, the country continued to experience high poverty incidence in both rural and urban areas. In 1970, the overall prevalence of poverty was 49.3%. Poverty was more prevalent in rural areas than in urban areas. Poverty was more prevalent among Bumiputera, accounting for 64.8 percent, compared to 26 percent for Chinese and 39.2 percent for Indians. In addition, the country had a high unemployment rate, which was 6.6 percent in 1967 and 8.0 percent in 1970. Economic disparities existed between urban and rural areas, as well as between indigenous and non-indigenous communities. Malays that represent the majority of the population and natives in Sabah and Sarawak (also known as Bumiputera), lived in rural areas and engaged in low-income, traditional agricultural activities like as rice farming and rubber smallholding. The Chinese and Indians, on the other hand, worked in high-growth industries such as tin mining, agriculture estates, trade, and manufacturing. It is important to acknowledge the existence of significant income disparities between Bumiputera and the other two major ethnic groups, Chinese and Indians. These disparities can be attributed to imbalances in educational opportunities, employment prospects, and access to entrepreneurial resources. As a result of the occurrence, corrective steps to redress the imbalances were implemented in the form of a New Economic Policy (NEP) in 1970 (Lee, 2022). Under the affirmative action plan, the government developed and executed policies to achieve distributional goals in order to strengthen the capacity and capability of economically disadvantaged groups, primarily the Bumiputera.

4. Article 153 of the Federal Constitution: Understanding Affirmative Action at a Glance

While Article 8 acts as a safeguard to uphold the principles of fairness and equality by ensuring that all individuals are equal before the law and are entitled to the equal protection under the law Article 153 on the other hand allows for affirmative action measures to address historical imbalances. As previously stated, the foundation of the Malayan Union in 1946 was met with substantial opposition from the Malays due to the perceived erosion of Malay monarchs' power and diminishment of Malay privileges. The Malayan Union, however, was later disbanded in response to these concerns. Following that, the Federation of Malaya Agreement which was established two years later, tried to address the Malay community's specific concerns. In essence, the Federation of Malaya Agreement clearly safeguarded Malays' special position and placed it under the exclusive jurisdiction of the High Commissioner of Malaya.

Due to the failure of the previous economic strategy adopted by the British advisors in upholding social justice for Malays at large, affirmative action has become the responsibility of the government at both the state and federal levels. The specific provision states, “*the protection of the Malays’ position and the legitimate interests of other communities.*” The above policy arose from the State Agreement, 1948, signed on 21 January 1948 between the British Government and respective Malay Rulers, which imposed on the Government of each state a specific charge to provide for and encourage the education and training of Malay inhabitants in order to fit them to take a full share in the state's economic progress, social welfare, and government of the state and the Federation (Wan Hussain, 2021). However, the Federation of Malaya Agreement’s goal of developing towards self-government was postponed due to the commencement of the communist insurgency in 1948. As a result, the United Malays National Organisation (UMNO), the Malaysian Chinese Association (MCA), and the Malaysian Indian Congress (MIC) formed the Alliance. The Alliance was critical in negotiating the transition from British rule to independence, as well as in drafting the constitution. A meeting was held in London in 1956 to define the basis on which independence would be granted, as well as to establish a constitutional committee tasked with drafting Malaya's constitution.

The ensuing commission, known as the Reid Commission, was expressly tasked with safeguarding the Malays' unique position while also protecting the legitimate interests of other communities, as stipulated in the Federation of Malaya Agreement. The provision which was initially supposed to be for a temporary period of 15 years lasted until today. The non-permanent nature of this provision infuriated the Malays. As a result, a tripartite working group was formed to study the Reid Commission Report. As a result, the tripartite working group amended the report including the elimination of the 15-year time limit, essentially enshrining the clause in the Federal Constitution (Lee, 2005). This amendment sought to protect the Malays’ unique position while also acknowledging the rights of other communities that coexisted with them. The tripartite working party's changes guaranteed that the Article became a permanent and integral component of the Malaysian Constitution, balancing the particular position of Malays with recognition of the rights of other communities.

When Sabah and Sarawak became part of Malaysia in 1963, the constitutional rights granted to the Malays under Article 153 were extended to include the native people of Sabah and Sarawak. This significant development stemmed from the recommendations put forth by the Cobbold Commission, which submitted its report in 1962. Among its various proposals, the Commission suggested that the special privileges and protections afforded to the Malays be extended to the indigenous communities of Sabah and Sarawak as well (Chin, 2019). The incorporation of Sabah and Sarawak into the federation resulted in amendment to the constitutional framework to account for the specific circumstances of the states and to resolve economic inequalities, limited access to education and employment opportunities that plagued the populations in Sabah and Sarawak.

Article 153 which is one of the traditional elements of the constitution, establishes the duty of the Yang di-Pertuan Agong to protect the special position of the Bumiputera. This provision reflects a commitment to ensuring the socio-economic well-being of the Bumiputera while also safeguarding the legitimate interests of other communities within the nation. Although Article 153 of the Malaysian Constitution aims to safeguard the special position of the Bumiputera community, it does not however explicitly define the scope of the legitimate interests of other communities and the extent to which these interests should be protected (Lee, 2018). Because of this, the issue of the dependency of the Bumiputera community on Article 153 continues to be a subject of debate.

Many believe that the Bumiputera community has made significant economic progress in the recent years and the continued reliance on Article 153 may no longer be necessary (Chin & Teh, 2017). However, upon closer scrutiny, it becomes evident that this may not be the case. Recent Bumiputera employment statistics from 2021 revealed that there are still many challenges to be addressed. In the context of employment, out of a total of 0.64 million Bumiputera individuals in the workforce, approximately 0.47 million are unemployed. These figures indicate that unemployment remains a significant concern within the Bumiputera community, highlighting the need for continued attention and efforts to improve employment opportunities for Bumiputera (Department of Statistics Malaysia, 2022b). According to Abdul Aziz, the Article 153 constitutional amendment process is purposefully strict, indicating that it was not intended to be a temporary provision.

Amending Article 153 necessitates not just a two-thirds vote in Parliament, but also the agreement of the Conference of Rulers. These stringent conditions emphasise the importance and long-term character of Article 153, implying that it was intended to be a permanent element of the Constitution (Abdul Aziz, 2008). Another significant aspect worth highlighting is the intricate connection between this provision and the fundamental right to freedom of speech. In response to the race riots of 1969, Parliament passed the Constitution (Amendment) Act 1971, which amended Article 10 of the Constitution regarding freedom of expression. These revisions gave Parliament the right to pass legislation prohibiting the interpretation of Article 153 of the Constitution (Suzuki, 2011). As a result, the right to free expression is restricted. In fact, a person who is found to commit the act is guilty under the Sedition Act 1948. The goal of these modifications was to promote social peace, preserve national stability, and prevent any provocative or inflammatory statements that could worsen racial tensions or jeopardise the delicate balance established by Article 153. The modifications sought to protect the ideas and provisions established in Article 153, which address the distinctive position of the Bumiputera community as well as the legitimate interests of other communities, by limiting the questioning of Article 153. While the changes were passed with the intention of preserving social cohesiveness and developing mutual respect, it is vital to note that they limit freedom of speech. This restriction is designed to achieve a compromise between protecting diverse populations' rights and interests and ensuring that public dialogue stays within parameters that promote harmony, and national unity.

Discussion

1. Article 136 of the Constitution: Balancing Meritocracy and Affirmative Action in the Public Service

Article 136 of the Malaysian Constitution establishes a clause that allows for merit-based considerations in specific fields of public service, acting as an exemption to the affirmative action policy. While Article 153 provides for affirmative action measures to accommodate the Bumiputera community's unique circumstances, Article 136 assures that appointments and promotions in the public sector are decided on the basis of merit and capacity. According to Article 136, the Yang di-Pertuan Agong, shall utilise his functions under the Constitution and federal legislation to ensure the protection of the special provisions for Malays and residents of Sabah and Sarawak enshrined in Article 153.

However, nothing in Article 136 precludes the introduction of procedures for the reservation of appointments or posts, or the granting of promotions, in favour of any racial minority in the public service that the Yang di-Pertuan Agong deems fairly required. This clause allows for the implementation of merit-based considerations and provisions to promote equitable opportunity in the public sector for all racial groups. It ensures that appointments and promotions are not primarily based on race, but also on an individual's credentials, competencies, and merit. According to the former Lord President of the Federal Court, he suggested the need for a harmonious interpretation of both Article 153 and Article 136 of the Constitution. Article 153 allows for reservations at the time of admission into employment, however the equality principle in Article 136 should prevail in areas of promotion, awards, and other relevant factors after persons are in service (Mohamed Hashim, 1976). This argument emphasises the significance of achieving a balance between affirmative action policies and the fundamental concept of equality in the workplace. While Article 153 recognises the importance of affirmative action in addressing historical imbalances and uplifting marginalised communities, Article 136 emphasises the principles of equality and meritocracy as individuals advance in their careers.

2. The Two-Fold Discrimination Conundrum in Public and Private Sectors

What is unique about this whole situation is that the Bumiputera frequently complain about discrimination in the commercial sector, whereas non-Bumiputera complain about prejudice in the public sector. Both viewpoints have virtues and biases, but they talk over one other and create a deadlock (Lee, 2017). At present, Malays constitute a significant majority, accounting for approximately 78% of federal government employees, with a staggering 80% occupying senior decision-making positions. The lack of diversity and the perceived sense of exclusion among minority groups have emerged as valid and pressing concerns. However, a similar

concern has evolved in the private sector, but with a noteworthy shift in the mechanics of discrimination. The emphasis in this context is on alleged prejudice against Malays.

In a study conducted by Mohammed and Lee Hwok Aun serve as an example to this issue. According to the study, race was more important than resume quality. Malays were found to be less likely to be interviewed. The call-back percentage for Chinese candidates was 22.1%, while the call-back rate for Malays was 4.2%. Even Malay-controlled enterprises called Chinese applicants 1.6 times more than Malay applicants (Mohammed & Lee, 2016). Based on the above, it is worth highlighting the importance of addressing discrimination and promoting equal opportunity across all industries. Initiatives must be made in both the public and private sectors to improve diversity, inclusion, and meritocracy.

3. Recommendations

Firstly, the government should allow for a cross-sector collaboration. In order to address challenges of discrimination and inequality, collaboration between the public sector and private sector should be encouraged. Secondly, the government should also promote inter-community dialogue between different communities to foster understanding, empathy, and collaborative problem-solving. However the dialogue should be within the limitations set out by the Constitution.

Conclusion

To conclude, the Constitution seeks to maintain a harmonious balance between the development of the Bumiputera and the rights of other communities, fostering unity and social cohesion. While Article 153 recognises the need for targeted measures to uplift certain communities, Article 8 ensures that these measures do not lead to unfair discrimination or violate the principles of equality and non-discrimination. By incorporating Article 136 as an exception to the affirmative action policy, the Constitution seeks to strike a balance between promoting affirmative action measures and recognising the importance of meritocracy in the public service. Understanding the historical background is equally important to appreciate the logic behind these policies and the difficulties they seek to address.

Acknowledgement: This research does not receive any research grant.

Conflict of Interest: The authors declare no conflict of interest.

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