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Calls to review Sabah-Sarawak ruling

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THIRTY-FOUR years after the formation of the country, Malaysians still have to carry their passports or fill up an arrival form when visiting Sabah and Sarawak.

Getting approval for a three-month stay there adds to the indignation.

The requirement for lawyers from the peninsula to obtain work permits and ad hoc admission before appearing in courts there recently drew the ire of many.

These requirements Peninsular Malaysians have to meet are due to the guarantees accorded to Sabah and Sarawak when the two states decided to join the federation in 1963.

But lately, in the name of fostering national integration, and peeved by the seeming unfairness of certain concessions, calls are being made for a review of the agreement.

Constitutional lawyers and academicians said they were not aware of any provision in black and white for a review of the agreement after a period of 30 years or any specific period for that matter.

Prominent constitutional lawyer Dr Cyrus Das pointed out that the Federal Constitution has included a special part - 12A - and "it is significant that the intitlement of this part is called 'additional protections for the States of Sabah and Sarawak.'"

"The unique thing about the articles that appear under this part, namely articles 161 to 161E, deal specifically with certain rights meant to protect the special position of Sabah and Sarawak in relation to a number of matters.

"More importantly these provisions may not be amended except with the concurrence of the State Legislatures of Sabah and Sarawak or in certain matters with the concurrence of the Yang di Pertua Negeri of Sabah and Sarawak.

"From a constitutional standpoint the significance of this requirement is that they provide a form of entrenchment of rights, namely, that the ordinary amending procedure to the other parts of the constitution as provided under Article 159 would not be sufficient."

"In other words, in respect of the matters protected for Sabah and Sarawak, this additional requirement of the consent of the relevant bodies of Sabah and Sarawak should be obtained for a valid amendment before it can come into force."

An authority on constitutional law, Institut Teknologi Mara associate professor Dr Shad Fhad Faruqi said: "It is rather unusual for people in a country to be unable to travel freely to another region in the same country.

"The issue here is the pull for national unity and integration on the one hand and the desire for preserving the special position and privileges enjoyed by Sabah and Sarawak on the other."

The special rights and privileges need to be reviewed, he said.

"It is all a question of political judgment. Reviews are not uncommon. Even in the case of the United Kingdom, concessions given to Ireland and Scotland were taken away.

"However, any review of the 20-point agreement should be done through consultation and consensus and not unilaterally.

"Whether these informal safeguards should be adversely affected, is ultimately a matter of policy and politics which require wisdom, vision

and statesmanship."

Commenting on the possibility of lifting the restrictions imposed on professionals to work in the two states, Prime Minister Datuk Seri Dr Mahathir Mohamad said the Sabah and Sarawak Governments were not prepared for it yet.

"They feel threatened. They are still of the opinion that they have not reached the stage when they can 'open up' to professionals from the peninsula."

Political sociologist, Vejai Balasubramaniam who did his doctorate thesis on Federalism said it must be stressed that the geo-political situation in the early sixties was such that the North Borneo State (Sabah) and Sarawak would not have become a part of the Malaysian federation if not for the guarantees provided in the agreement.

Though no review has been done, many of the original provisions have seen amendments over the years through the passing of Bills by subsequent State Governments.

For instance, in the interest of national integration, Labuan was ceded to the Federal Government.

He also pointed out that more people from Sabah and Sarawak should be employed in the Federal civil service as provided for in the agreement but it was common knowledge that Peninsular Malaysians make up the bulk of the service in the two States.

Asked whether the call for a review was valid, Balasubramaniam said it should be viewed from two angles.

From the position of the States, it would appear they would be losing out.

"It will be going against the whole idea of the creation of Malaysia.

"It will be striving for a unitary state and is not in tune with the concept of federalism."

From the point of view of the whole country, he said, immigration should not be a bone of contention and Malaysians should not be required to go through immigration in their own country.

"But to foster harmonious relationship, it is imperative to honour historical agreements.

"Immigration was seen as a shield behind which Sabah and Sarawak could seek protection. It would appear the people of Sabah and Sarawak are not yet ready to give up immigration control because they would see this as jeopardising their own interest.

"And State Governments will in no way want to be seen as giving up the State's rights short of losing favour among the electorate.

"If in time their fears are allayed, then they will not stand in the way of a review of the concessions."

It is pertinent to note what Sarawak National Party president Datuk Amar James Wong said at a 1985 conference on Federalism and Territorial Integration in Malaysia organised by the Institute of Strategic and International Studies.

"As one who supported the concept and who had been involved from the very beginning in the discussions that led to the formation of Malaysia, it is perhaps useful for me to recapitulate and reiterate here that the people of Sabah and Sarawak joined the federation in order to gain their independence as equal partners of the other states of Malaya, with certain autonomous rights and privileges as enshrined in Article 161 of the Federal Constitution.

"Due to differences in education and economic advancements between them and the people of Semenanjung, the Sabahans and Sarawakians felt that they would be at a disadvantage until certain provisions were made for their protection in the constitution.

"Among the issues foremost in their minds were education, Bahasa Malaysia and immigration."

Wong said emotional feelings should not cloud the issue.

"Without the concessions, the move to form Malaysia would have been a non-starter. What is unique about Malaysia is the unity in diversity.

"Malaysia is a multi-cultural, multi-racial and multi-religious nation and it is of paramount importance to respect each other's rights and privileges. If we do not respect and uphold the privileges and rights accorded, the whole structure on which this nation is based will crumble."

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