

*Labour Law in
Malaya*

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Labour Law in Malaya

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A Background to Malaya Book



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This short essay is presented in the form of a general survey of Labour and Trade Unions law in Malaya, and attempts to discuss certain local problems.

It is not a text-book and does not cover the entire field of Labour legislation in the area.

Many of the suggestions may not meet with general approval; they are nevertheless offered with the hope of promoting discussion on this most important subject among the parties concerned, the ordinary citizen, the employers' federations and the trade unions, all of whom stand only to benefit by a long-lasting industrial peace safeguarded by a comprehensive and liberal code of Labour laws.

C. Gamba

THE GENERAL VIEW

To understand the character of labour legislation operating on the Malay peninsula and the island of Singapore, it must be remembered that not until recently was there any indigenous *Malayan* labour. When the economic expansion of the area first began, the foremost problem facing the Administration was that of Chinese and Indian immigration.

According to early records, Chinese appear to have been residents of Malaya as early as 1349, but close contacts with China did not take place until the fifteenth century, while the larger immigration of Chinese began four centuries later.

The increasing demand for labour was brought about by the expansion of tin mining, commerce and trade and by the opening of the railway. In fact, it was Chinese and Indian "coolie" labour that was primarily responsible for the development of wealth in Malaya.

Indian immigration was at first free, helping to expand the early coffee and sugar-cane estates. Later, labour was needed for road construction and other public works and, as with Chinese labour, it was needed on the railway. The migrants came under the indenture system and, later, under contract. After the end of the century, most of the Indian labour was recruited for work on the estates. Regulations were needed to safeguard these people at work. The authorities sought to control Chinese immigration, which meant the checking of abuses by recruiters of labour and the protection of labour itself from malpractices. There followed the introduction of legislation to protect Indian labour flowing into the newly-opened coffee, tea and sugar-cane plantations and, a while later, the rubber estates. In 1912 the first Labour Code condensed, amended, brought up to date and added to all previous legislative measures, covering all classes of workers but being directed particularly to labour on the estates.

While the Straits Settlements and the Federated Malay States developed economically into important centres of commerce, trade and the production of rubber and tin, new laws had to be introduced to cater for group interests – the associations. Then, after the first World War, Singapore and Malaya became more politically alive, much of the nineteenth century torpor disappearing. Surrounded by awakening areas seeking political and economic emancipation, the island of Singapore, with its large Chinese population, and the peninsula with its three-fold group of Malays, Chinese and Indians, could, not but take an interest in these happenings, while within the two areas new ideas and new feelings were operating changes in the labour body. There came to the fore new groups of labour, well organized and similar in administration to Western trade unions. The Government of the Federated Malay States was aware of these changes. In 1936, the Colonial Office, London, had suggested that trade union legislation should be introduced in certain Colonial areas. In 1938, for the first time in Malaya, a Bill recognising trade unions was introduced in the Legislative Council of the Federated Malay States.

The first Trade Unions Enactment was published in 1941. The development of labour law in Malaya was interrupted, for three and a half years, by the Japanese occupation. The trend of development continued after liberation when the trade union legislation came into actual operation. From that time onward, it was amended to suit the rapidly changing political and economic situation in Malaya. Together with trade union legislation there had also been introduced regulations to deal with arbitration procedure, trade disputes and labour welfare.

The post-war period saw the rapid expansion of trade unions in every sphere of private enterprise, central and local government administration and the public authorities. It was also a period of socio-economic expansion which, though not very rapid and rather circumscribed, was nevertheless quite clear. New labour problems were partially solved by the introduction of proper legislation such as the Federation of Malaya Provident Fund Ordinance and the Workers' Compensation Ordinance, 1951. Many of the new regulations were radical amendments of legislation already in operation before the war. Some of these measures remained on the Statute books unused, as, for instance, the Wages Council Ordinance of 1947.

Two factors added to the demand for revised laws. The first was the rapid population increase, particularly in Singapore – a growth due to natural forces and immigration. The second reason was the necessity imposed upon the Administration to regularise by law the employer-employees group relationship, now that independently organized groups of workers faced the employers.

II

THE LABOUR LAWS - SINGAPORE

On May 1, 1823, Stamford Raffles caused an Ordinance to be published, a section of which read:

“As it frequently happens that free labourers and others are brought from China and elsewhere as passengers who have not the means of paying for their passage, and under the expectation that individuals resident in Singapore will advance the amount on it on condition of receiving the services of the parties for a limited period in compensation thereof – such arrangements are not deemed objectionable provided the parties are landed as free persons, but in all cases the amount of passage money or otherwise is limited to twenty dollars, and the period of service by an adult in compensation thereof shall in no case exceed two years, and every engagement shall be entered into with free consent of the parties in presence of a Magistrate, and duly registered”.

This may be called the first labour regulation introduced in the Malayan area. It describes the type of labour obtained at that time and the terms of remuneration. Singapore had by then been declared a free port. It was expanding rapidly as a centre of commerce and trade. Raffles’ Ordinance was soon forgotten and this early type of immigration led to grave abuses, to the extent that individuals *imported* under this system, soon came to be publicly known as *Chue Tsai* or piglets. An attempt made fifty years later to control migration by the introduction of an Immigration Ordinance, came to nought because the Ordinance remained inoperative. Public concern over the conditions of labour was increasing but, even though a Commission, in 1876, did inquire into the position of indented labour, it was not until a year later that a second Chinese Immigration Ordinance was introduced appointing a Protector of Chinese. He was to be in charge of a Department of Labour henceforth to be known as the Chinese Protectorate – colloquially, the *Pi Ki Ling*, by the name of the first Protector, W. A. Pickering.

The creation of the Protectorate was followed by measures covering the freedom of indented migrants once they had paid for their passage, and for those whose passage had not been paid. It became a punishable offence to induce persons, by deceit and other illegitimate ways, to leave the Colony for service elsewhere, and the Protector was made the authority granting clearance for such transactions. The Ordinance of 1882 provided, for the first time in Malaya, for written Labour contracts covering a term of five years. In the next Ordinance, of 1883, the term was reduced to three years within the Colony and five elsewhere. By this time there had been an increasing demand for labour from Sumatra and Borneo, from the Straits Settlements and the Protected Native States of Malaya. Labour still came from China and Southern India. The increased demand was particularly due to the large expansion, in the eighties, in the tin mining industry on the peninsula, created by the Western industrial "revolution" and its after-effects – the rapid development of railways and the growth of machine-operated industries. Rubber, though introduced in Malaya in 1887, was not yet a commercial proposition. Sugar-cane, coffee – for a short while only – and tea, in this order of importance, were still the main investments of Western Colonial enterprise. The introduction of Western capital into Malayan agricultural production developed a new economy based on the export of raw materials. High returns depended not on the use of labour-saving devices, but on the availability of large groups of cheap labour, obtainable from external sources. The conditions of labour tenure became thus determined by the necessity of attracting capital during a period of rapidly expanding Western markets. The Administration, however, while sympathetic to the employers, could not think purely in terms of returns to capital. It was concerned with the treatment of labour, particularly on the estates. Thus, in 1890, a Commission was appointed to inquire into the conditions of labour in the southeast Asian areas under British control. The Commission's Report advised, among other things, closer inspection of places of work. This recommendation was followed by the Chinese Agricultural Labourers' Protection Ordinance of 1891 which revised previous regulations, gave a stronger backing to the inspection of conditions of work and reduced the labour contract to 330 days' work.

III

THE LABOUR LAWS - FEDERATED MALAY STATES

Until the end of 1909 each State on the Malay peninsula had introduced and administered its own labour importation laws. Some of the regulations dated back to 1880, and all had received the careful scrutiny of British Residents or Advisers. The Federated Malay States were interested in both Chinese and Indian immigrant labour. The latter, however, came under legislation emanating from the Government of India. The earliest of the local laws in any way related to Indian labour was the Enactment of 1857 for the regulation of passenger traffic in the Bay of Bengal. While on the one hand it raised the cost of passages, on the other it helped begin a system of assisted immigration. Large employers of labour sent agents to India to engage and advance money to persons willing to emigrate but too poor to pay the cost of passages themselves. Abuses took place and negotiations were opened between the Malayan Administration and the Government of India to clarify and set on a proper basis the immigration of Indians to Malaya. In 1890 the Straits Government appointed a Superintendent of Indian Immigration. However, only in 1897 did the Government of India leave the control of migration between South India and Malaya entirely to the Colonial Government. A new system was introduced whereby Indian labour was recruited through *kanganis* (recruiters, themselves estate labourers).

Owing to the very quick and extensive development of the sugar-cane plantations, labourers were imported, whether indented or free, at the employers' expense. Then the rubber estates began a rapid expansion and "crimping" took place — labourers were induced by higher wages to leave the employers who had paid their passage to Malaya, to enter the employment of the rubber estates. This situation lasted until 1906. By now three systems of Indian labour recruitment were concurrently in operation: indenture or contract, kangani and free labour recruitment. Confusion and economic waste became prevalent. Dissatisfaction was being felt. A proposal was then made that all employers of Indian labour should contribute to

a fund to be expended solely for the recruitment of labourers from South India, particularly for the rubber estates. The Indian Immigration Fund was established a year later, in 1907, supervised and managed from the beginning by the Indian Immigration Committee consisting of the Controller of Labour, official and unofficial members – the latter being employers' representatives. From the viewpoint of recruitment this system showed success and quickened the demise of indenture which, officially, ended in 1910. Indented Chinese labour ceased arriving in 1914 by the operation of the (Amendment) Enactment No. 32, while Javanese labour still arrived under this system until 1932. The kangani system, only slightly less undesirable, continued until 1938.

IV

CONSOLIDATION

The first consolidation of many of the laws promulgated since 1880 took place in 1904 with the introduction of the Labour Enactment (Chinese Mining) and the Labour Enactment (Agricultural). Five years later another important legislation found its place on the Statute books of all the States, namely, the Truck Enactment, forbidding the payment of workmen in goods instead of money, or in money with the understanding that they should buy provisions from the employers. Owing to certain cultural characteristics, and the nature of particular industries, the truck system was, by many labourers, accepted without criticism and lingered on until the outbreak of the second World War.

By the end of 1910 a number of laws had been introduced to protect Chinese migrants going directly to the peninsula without passing through Singapore. The period of indenture was reduced to 300 days and other regulations safeguarded labour against unsatisfactory housing conditions, and took care of the workers' health.

The Labour Enactment of 1911 set down regulations to deal particularly with the supervision and treatment of estate labourers, among whom, the Chief Secretary gave an instance, on a certain estate of 1,100 men, 500 had been found sick.

The following year the first Labour Code came into operation in the Federated Malay States. It condensed all the previous Labour Enactments, which it considerably amended, and introduced new regulations. The (Amendment) Act No. 32 of 1914, mentioned earlier, removed from the Labour Code all the remaining regulations dealing with Chinese indented labour. The substitution of free immigration for the contract system brought about important changes among the labour force and, for that matter, in Malaya generally. Chinese wives and their children who, all this time, had been left behind in the village

of origin, now joined the head of the family, thus creating greater stability and permanency within the workers' group.

The Labour Code of 1912 closed a period of eighty-nine years during which, slowly and painfully at first, then with increasing momentum, the last vestiges of bound labour were replaced by a public recognition that rights had to be granted and dignity preserved at every level of the social scale.

V

SOCIETY LAWS AND TRADE UNIONS

During the period that followed, and until the outbreak of the second World War, minor regulations were introduced intermittently. Then, the 1912 Labour Code was revised, but it still defined workman in a terminology reminiscent of indented labour days. By this time labour had become organised into societies very similar in functions to Western trade unions.

Societies, associations and clubs of a variety of types had been formed in Malaya very early in the history of her immigrants. The Ghee Hin, possibly a branch of the Tien Ti Hui (Heaven and Earth League) was introduced in Malaya late in the 18th century. It pursued a commercial and labour policy until the development of its Hokkien rivals, the Toa Peh Kong and the Hai San. Clan feuds then started and lasted for a long period of time. When in the 19th century new tin deposits were discovered in central Malaya, Chinese minors arrived bringing with them their secret societies. Inter-society feuds again broke out to such an unprecedented extent as to lead to warfare and British intervention. The decision taken in 1887 to establish a Chinese Protectorate was also due to a recognition of the existence of secret societies and of their authority amongst the Chinese. Once the element of secrecy had gone, it was hoped that instead of being a menace to security, the secret societies would be used as convenient interpreters of Government policy to the Chinese people of Malaya. Eventually, however, the secret societies were declared illegal, as they became gangs of thugs and racketeers. Historically they are once again connected with labour at a much later date – after the second World War – in the two-fold role of intimidators and strike-breakers. The Federation of Malaya Societies Ordinance, 1949, clearly states that “every society, whether it is exempted or registered or not, which uses a Triad ritual shall be deemed to be an unlawful society”.

With the secret societies the Chinese brought also their guilds. These were often subdivided into associations of

employers and workers. They decreed on standards of works, hours of work, rates of pay, prices to be charged, and trained new workers under a strict apprenticeship system. To enforce their will on refractory individuals and groups, as well as to defend themselves in uncertain times, they employed bands of strong-arm individuals. Legislation was introduced in 1889 in Singapore, and in 1895 in the Federated Malay States providing for the registration, of associations of the gild type.

The Association laws were still in operation after the twenties of this century, when, under left-wing tutorship and influence, workers began to organise themselves in societies of a different type, often known as Mutual Help Associations, and registered under the Societies laws. These organizations had an almost entirely Chinese membership, and functioned in a manner similar to trade unions. They were not to be found on the estates, where Indian labour predominated, until well after 1937. Thus, during this period, labour organization took place only among factory and similar industrial workers mostly of Chinese origin.

In 1930, meanwhile, in England, Lord Passfield (Sydney Webb), in a circular despatch of September 17, 1930, had asked Colonial Governments, in view of the fact that existing trade unions and trade disputes legislation in the British Colonies varied, and that in some Colonies trade unionism had developed rapidly, while in others it had lagged behind or was non-existent, to consider the extent to which it might have been desirable or expedient to adopt the provisions of the legislation enacted in the United Kingdom, and to give attention to the problems likely to be created by the formation of trade unions in the British Colonies. He expressed the view that legislation should at least have been passed declaring that trade unions were not criminal or unlawful for civil purposes, and providing for the compulsory registration of trade unions.

Lord Passfield's suggestion was not acted upon in Malaya until 1938. The Colonial Government had nevertheless known for quite a while that the day was soon to come when the trade union movement would have to be recognised. However, even though major strikes had already taken place and often labour was ill-advised by irresponsible leaders, the employers were against the recognition of trade unions, fearing an attack on their freedom of choice of labour. Then in 1938, after a new outbreak of strikes – often possessing a political tinge – many

employers also were convinced that a new policy was needed. The Government introduced three Bills: the Industrial Courts Bill, the Trade Unions Bill and the Trade Disputes Bill. They were not passed until 1940, and did not come into operation until 1941 owing to the opposition against them, but for different reasons, by a section of the employers' group, and the workers. However, by 1941, wages – the main reason for much of the unrest – had risen due to the war boom, and the Japanese occupation came to halt progress until after the liberation of Malaya in 1945.

VI

TRADE UNION LAW

During the inter-war period, the British Government, still concerned with the labour unrest which had taken place in many of its Colonies, and particularly now with the 1941 strike on the copper mines of Northern Rhodesia, set up a Commission to report on these happenings. An outcome of this move was a visit, by the Labour Adviser to the Secretary of State for the Colonies, to Ceylon, Mauritius and Malaya. A Report was issued in 1943 which emphasized a more practical application of the Colonial policy, and suggested that trade union officers, with a wide experience of the functions, structure and purpose of trade unionism, together with proper labour and industrial relations machinery, should be part of the Governmental institutional framework in any Colony where trade unions were already functioning. The purpose of these appointments was to offer guidance and advice to the young and immature but nevertheless growing trade union movement in the Colonies and generally to advise the Government on matters affecting industrial relations. These officers were duly appointed, but not in Malaya where the Trade Union Adviser's Department, owing to the Japanese occupation, was not established until 1946.

By this time the British Government was considering the types of assistance to be offered, particularly to Malaya, under the Colonial Development and Welfare Act, 1940, which involved the employment of local labour. Section 1(2) (a) of the C.D.W. Act read:

“Before making any scheme under this section as respects any Colony, the Secretary of State – (a) shall satisfy himself, in any case where the scheme provides for the payment of the whole or part of the cost of the execution of any work, that the law of the Colony provides reasonable facilities for the establishment and activities of trade unions, and that fair conditions of labour will be observed in the execution of the works.”

A circular despatch on the subject had already been written by Lord Moyne in 1941, in which he had restated Lord Passfield's views. Lord Moyne had gone further and, having given careful consideration to what should have been regarded as essential provisions in paragraph 1 (2) (a) of the C.D.W. Act, had stated that, in addition to the provisions suggested by Lord Passfield, there should have been provision for the recognition of the rights of the members of trade unions to combine and to bring pressure upon employers; the recognition of the right to strike; the immunity from civil proceedings of persons who did certain certain acts to the prejudice of the business interests of others, in furtherance of a trade dispute; and the protection of trade union funds against civil proceedings in respect of torts committed by or on behalf of a trade union.

"It is true (Lord Moyne stated) that my predecessors and I have 'made schemes' under the Act, involving expenditure on the execution of works, in respect of Colonies, in which the Trade Union legislation does not include all these provisions. But I have now come to the conclusion that these are essential requirements for the purpose of Section 1(2) (a) of the Colonial Development and Welfare Act. Even Governments of those Colonies should therefore proceed forthwith with the review of their Trade Union legislation as suggested in this despatch....In order to assist Governments whose existing legislation consists of a simple ordinance on the lines suggested by Lord Passfield, my legal advisers have prepared a draft Ordinance, the text of which I enclose".

Copies of the despatch and of the draft Ordinance were forwarded to the Governor of the Malayan Union during June, 1946, and, **immediately**, the Registrar of Trade Unions, the Trade Unions Adviser and the Commissioner of Labour were asked to comment on the Draft Legislation with a view to amending the Trade Unions Enactment of 1940 along the lines suggested by Lord Moyne. Discussions also took place between the Government of the **Malayan** Union and that of Singapore. At last, the 1940 Enactment, amended on the lines suggested in Lord Moyne's Draft Ordinance, was applied throughout Malaya from July 1, 1946. Similar legislation came into operation in Singapore. The Trade Disputes regulations still remained those of 1940, that is, a replica of the United Kingdom legislation of 1927.

VII

THE TRADE DISPUTES AND TRADE UNIONS ACT, 1927

The background of trade union law in Malaya is better understood by examining its parent legislation, the United Kingdom Trade Disputes and Trade Unions Act of 1927.

The Act of 1927 came into operation for the purpose of curbing strike action and trade unions' bargaining power. Furthermore, it was designed to cripple the British Labour Party by attacking the main source of its funds – the unions. The Act restricted most of the regulations incorporated in the two Acts of 1906 and 1913.

The Act created a new group of strikes – illegal strikes. If a strike was deemed to be illegal an injunction could be issued to "freeze" or "stop" trade union funds which could otherwise have been used for its support. Furthermore, any person deemed to have declared, instigated or incited others to take part in acts in furtherance of an illegal strike, could have been fined or imprisoned for two years.

The term "illegal", under the Act, could have been applied to any strike which extended beyond a single trade and which was understood to coerce Government either directly or indirectly. One of the most serious implications in the wording of the Act was that no single definition could be given of "illegal" strike, and the interpretation was left to the Courts. Moreover, the unions were not so much restricted by the term "illegal" but by the fear that if a strike was declared illegal it could have brought about, by form of punishment, action against the unions' funds.

The definition of picketing was also severely restricted and no picketing was allowed of a person's home. The picketing of factories or places of work was made dangerous to unionists by the reintroduction of the offence of "intimidation" which, in the Act, was in fact completely undefined.



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