



RESEARCH PAPER

Formation of Federation of Malaysia under the rule of British Empire: An Analysis

Shahida Begum¹ Dr. Imdad Hussain Sehto² Dr. Abdul Majeed Chandio³

1. Assistant professor Department of Political Science Shah Abdul Latif University Khairpur, Sindh, Pakistan
2. Professor Department of Pakistan Studies Shah Abdul Latif University Khairpur, Sindh, Pakistan
3. Professor, Institute of International Relations & peace and Conflict Studies Shah Abdul Latif University Khairpur, Sindh, Pakistan

***Corresponding Author**

shahida.chandio@salu.edu.pk

ABSTRACT

The main objective of this study is to understand the concept of federalism and to analyze the procedure opted by the British Empires to introduce federal system in Malaysia. After the World War II federal system became the popular option for modern nation States. Federalism in Malaysia, also introduced by the British empires in 1895 under the Federated Malay States (FMS). The federation of that time was not in true sense, it was emphasizing to strengthen the central government. Chronologically, the 1948 FMA was the successor to the abrogated constitution of 1946 Malayan Union constitution. Nine years later the FMA was in turn replaced by the 1957 federal constitution (Merdeka Constitution). This paper examines the formation of federation of Malaysia by using the descriptive and qualitative methods of study, and find out the features of above said constitutions that strengthening the central governments.

KEYWORDS Central Government, Constitution, Federating Units, Federation, Malaysia

Introduction

Malaysia is a South East Asian State remained 100 years under the rule of British Empire. One decade after the world war II Malaysia got independence. Malaysia is multi-ethnic, multilingual, multicultural and multi-religious federal State. The total population of Malaysia is 30 million and it covers 33,0000 sq km (Musa, Nawi, & Alias, 2014). The federation of Malaysia is consisted of two parts West Malaysia at the Malay Peninsula and East Malaysia in the Island of Borneo (Ibid) . There are 13 federating Units in Malaysia, 11 states are the part of West Malaysia at Malay Peninsula, they are Perils, Kedah, Penang, Perak, Selangor, Negeri & Semblian, Melaka, Johar, Pahang, Terengganu and Kelantan and 2 states of Sarawak and Sabah are the part of East Malaysia in the Island of Borneo and three federal territories the Kuala Lumpur, Labaun and Putrajaya. Ethnically Malaysia is divided into Chinese, Indian and Malayan. The major group is of Malayan speaking people the second largest group is Chines and then the Indians are settled in Malaysia. The majority population believes in Islam and they are more than 47%.of total population, 36 % of population believes in Hinduism and others belong to Christianity.

Federalism is a conspicuous and widely implemented system of governance of several countries in today's political structure. Around 70% of countries worldwide have at least some elements of federalism in their setup, and 40 % of the world's population lives in these countries (Ahmed Mustafa, Ayus,2018)

If any State adopts the federal system of governance, there is highest importance of the issues of the rule, the central rule and the provincial rule, that, how much power should be exercised by the National/Central/Federal government and the Provincial/Regional/state government. According to Daniel.J.Elazar in a wider sense, federalism encompasses the linkage of individuals, groups and polities are stricteed in union(i-e,in a way that it provides for vigorous pursuit for the common end that, at the same time, upholds the reliability of all parties (Elazar,1994)

History of federalism in Malaysia:

The origin of modern federation of Malaysia formally Malaya, can be traced back at least to 1895, when the Federated Malay States (FMS) Selangor, Perak, Pahang and Negeri Sembilan was formed by the British colonial administration. (Ahmed, Mustafa,Ayub, 2018). The limit of Federated Malay States was restricted to only three aspects that was legal aspect, financial and administrative aspect. Though the federal system in Malaysia was introduced in 1895 by British rule but the federation of that time was not in true sense, it was emphasizing to strengthen the central government and not focusing on sovereignty of the federating units.

This was not a federation in the accepted sense of the term, but the real significance of the treaty of federation for our purposes lies in the idea of federation implicit in it. An idea which paved the way for the ultimate establishment of true federal government in Malaysia (Ahmed, Mustafa,Ayus, 2018).

The federal system under Federated Malay States (FMS) was focusing the central government be strong and enjoying sovereign power over its component units. Due to this factor, the other units of Malaya were not taking it serious to be the part of such federal system. According to Muhammad Kamal Awang, the model of the federal system at that time was focusing on a strong central government that has sovereign power over its surrounding units. And this was the reason for the Un-Federated Malay States (UFMS) in deciding not to join this federation, this left five other Malay states, Johore, Kedah, Perlis, Kelantan, and Terengganu under British protection outside the FMS as the Un-Federated Malay States (UFMS) until the Japanese occupation of Malaya during 1942-1945(Bakar,2004).

In 1946 British introduced the unitary form of state under the Malayan Union (MU) in the ten states of Malay Peninsula. They were Perlis, Kedah, Penang, Perak, Selangor, Negri Sembilan, Malacca, Johore, Terengganu and Kelantan.

It was for the first time that the eleven states of Malaya were proposed to at the same time under the one administration. Malayan Union (MU) was an attempt by British to introduce the unitary system. (Aun,1999). British imposed Malayan Union, conceived on a secular model of administrative efficiency, floundered precisely because the scheme failed to cope with the suddenly expressive and rapidly changing tenor of Malay's political life (Rudner, 1976). This system was not accepted by the community of Malaya, as even the system was rejected by Malay Rulers also. The Union lacked popular legitimacy and was fiercely opposed by the United Malays National Organization (UMNO) (Ahmed, Mustafa, Ayus 2018). Although the idea of Malayan Union was not supported by the Malay Rulers and was rejected by Malay community, but some of the features of MU are embodied in the present federation of Malaysia. This includes the provisions, which allow the federal government to assume control over the states, which indicate that the power lies on the central government (Omar, 2012). The strength of opposition eventually led to its abolition in 1948 and replacement with a new federal constitution (Watts, 1964).

The Federation of Malaysia under the 1948 Federation of Malaya Agreement (FMA):

Due to failure of the proposal of Malayan Union (MU), British decided to create a Federation of Malaya agreement in 1948 under the federation of Malaya agreement (Omar, 2012). The new federation in Malaya that came into existence in 1948 also called colonial federation of Malaya (Rudner-1976). The importance of FMA is that in fact this agreement put the stone of independence of Malaysia, which he got in 1957. According to Martin Rudner, the colonial federation of Malaya ,which came into being in 1948 and gave the way to self-government in 1957, constituted in historical perspective a major formative influence in state-building.(Rudner,1976). According to Dr. Malik Munip, he has written in an article that chronologically ,the 1948 FMA was the successor to the abrogated 1946 Malayan Union constitution (Munip, 2014). Nine years later the FMA was in turn replaced by the 1957 federal constitution(Merdeka Constitution).Yet both of these constitutional predecessors to the Merdeka constitution were not superseded for the same reasons (Munip,2014).

The colonial federation was the transitional period for Malaysia which changed the Imperial styled Malaya, into the modern forms of State of Malaysia. Colonial federation was not only the first effort at governmental modernization in British Malayan, however it was the first that combined a joint British Malayan Design for Political development (Rudner,1976).

The communal political life in Malays was preceded towards a rapid change. Because of this change the British government was confronting the boycott of Malay's on one hand and on other hand it also the radicalism of Chines was rising and as well as the militancy of communist was increasing ,which impelled the British government to replace the Malayan Union (MU) by a new constitution for country. In this regard, the working committee was made. Committee consisting of U.K representatives on one hand, and the Malay Rulers together with representatives of the United Malays National Organization (UMNO) on the other hand (Ibid).This working committee had to meet to draw a such constitutional draft, which included the Political claims of Malays and as also the interests and principles of British which they pertaining to Malaya. On the British side, it was deemed essential that a strong central government be established with control over all matters of the country as a whole (Rudner, 1976) UMNO and the Malay Rulers, for their part sought to uphold the 'individuality' of the Malay states and ,while conceding the necessity for strong central government, they envisaged a federalist distribution of powers similar to the Government of Indian Act (Ibid) the end the working committee recommended federal constitutional structure having 'comprehensive 'legislative authority vested in the central government, tempered by strong state representation in federal political organs. (Rudner, 1976) .In drafting their constitutional proposals, the working committee had to follow certain basic principles;

1. That there should be a strong central government
2. That the individuality of each Malay state and settlement should be clearly expressed and maintained.
3. That the arrangement should offer the means towards ultimate self-government.
4. That a common form of citizenship should be introduced for all those, who regard Malaya as their real home and objects of their loyalty and
5. That the Malays occupy a special position. (Munip, 2014)

6. After the publication of the report of working committee, it was sent to constitutional consultative committee to find out some other societal and communal interests of federation ideas. Most of submissions to the constitutional committee involved wrangling over allocations of legislative seats, rather than issues of principle (Rudner, 1976) second source, British business interests supported the federal scheme, though the merchants of Panang and port Swettenham (town in Malasiaian south west of Kuala Lumpur, its other name is Kelang) dissented over the exclusion of Singapore (Ibid). Still, British commercial groups asked for enlarged corporate representation on the federal legislative council, in line with the magnitude of European trading and cultural interests' in Malaya (Ibid). By far the most strenuous reaction against the proposed federation came from the Pan-Malayan Council for Joint Action (PMCJA) which was initially established at the Council of Joint Action (CJA) on 14 December, 1946. The CJA was set up as a United Front to challenge the Anglo Malay proposals for a federation of Malaya to replace the Malayan Union. At its inception, the council was a mix of different Singapore organizations, that included the Malayan Democratic Union (MDU), Malay Nationalist Party (MNP) Malayan Indian Congress (MIC), Straits Chinese British Association, Singapore Tamil Association, Singapore Women's Federations, Singapore Clerical Unions and Singapore Federation of Trade Union (SFTU) on 22 December, the council's membership was extended to include organizations of Malayan Peninsula and (CJA) was renamed as Pan-Malayan Council for Joint Action (PMCJA) called for the inclusion of Singapore with a United Malaya (resources.nlb.gov.sg). For joint action, protesting the abandonment of what they argued were the progressive features of the previous Malayan Union scheme Constitutional provisions for nominated, corporate representation were also criticized by left wing and Nationalist groups wanting a broad based elected legislature. Moreover, the proposed constitutional structure was strenuously attacked by radicals from all communities for accentuating the political authority of the traditional Malay elite (Rudner, 1976). Tin interests opposed the decentralization of power over land (Rudner, 1976). While other communal and commercial interests joined to demand the inclusion of Singapore in the new federation (Rudner, 1976).

The report of consultative committee accepted the basic principles of the draft constitution, including the principles of Malay privilege, but suggested a substantially enlarged federal Legislative Council. Originally the working committee suggested a legislative council consisting of 48 members out of which 34 were suggested to appoint unofficial members. The Consultative Committee favored a Council of 75 with 52 unofficial, though a Minority Report of its Chinese members proposed a legislature of 66 with 52 unofficial but with a fewer Malays. The final proposals for a legislative council of 75 with 50 unofficial members (Rudner, 1976). Conference returned their recommendations to the working committee which sent its final proposals to a plenary conference of Rulers, governor and UMNO. Certain modifications were then made to the original constitutional proposals with regard to the scope of legislative, recruitment, though not its communal balance, and to citizenship proposals (Ibid). Finally the federation of Malaya came into existence, on 1, February in 1948 (Ibid). According to Martin Rudner, the resulting federal constitution was not the most acceptable to any one community, but it certainly was the least unacceptable to all (Rudner, 1976). During the discussion of working committee the three titles came under the discussion for drafting the constitutional proposal 1. Malayan Federation, 2. Malayan Federal Union and 3. The federation of Malaya (FOM) (Munip, 2014). Legal scholar R.H Hickling says, the Malayan federation was rejected because the word 'Malayan' meant people who were associated

with Malaya but did not include Malays while the Malayan Federal Union was rejected because it did not put enough emphasis on the sovereignty of each state. Additionally both could not be adequately translated into Malay (Ibid). So it was decided that the title of Federation of Malaya (FOM) giving a strict translation of the Malay title 'Persketuan Tanah Melayu' a very literal meaning; the coming together into federation of pre-existing Malay states that had sovereign status (Munip, 2014). Unfortunately, due to the Communist insurgency that broke out in 1948 translating into reality the FMA's expectations that progress should be made towards self-government 'was delayed (Ibid).

According to FMA 1948 the political authority was distributed into three coordinating sets of government structures;

1. State/ Settlement
2. Federation
3. Imperial

Each of these set got an official jurisdiction over certain aspects of Policy while holding wider interests in others.

Constitutional Federalism

The Malayan Federalism seeks to merge the modernizing propulsions of central government with the preservation of traditional cultural patterns place in the Malay states. According to official conception, the federal government represented but an agent of the state and settlement governments for certain prescribed functions (Rudner, 1976). Malayan constitutional principles insisted that general policy' required the devolution of power to State/settlement governments, notwithstanding the desire for uniformity.(Ibid). Despite of this if the FMA made the federal system that meet on extremely centralized effective authority. It can be found from lists of legislative jurisdiction as an evident. An extra ordinarily comprehensive list of 144 subjects covering most matters of Public Policy significance was assigned to federal authority (Rudner, 1976). There were ten subjects, only whose jurisdiction was assigned to the state/settlement governments. Which mainly deals with land, agriculture and primary and secondary schooling was the part of those subjects. The seven other subjects were assigned to state/settlement governments to exercise the powers as they were delegated to them by federal government. These included factories and trade, statistics, road transport, public health, fishing, veterinary services and the production, sale, supervision and regulations of agriculture, mining and industry (Ibid). Martin Rudner says that although the residual powers were reserved to the states/settlements, the FMA took great pains to ensure that little residual scope to left. (Rudner, 1976). Indeed such was the thrust of FMA centralism that even where constitutional jurisdiction was assigned to the state/settlements the federal government could still intervene to ensure common policy and a common form of administration (Ibid).

The Federal Government

1. The FMA provided the three tiers of policy making structure to federal government. To govern the formal institutions of the federal government, it added:'
2. The Commissioner; for aid and advise by Federal Executive Council in Malay Sultanate.
3. Conference of Rulers; was a symbol of traditional legitimacy
4. Federal Legislative Council; that consisted of official and of appointed unofficial representatives providing such structure of federal government by FMA was an attempt

to combine central colonial control and to make movement more responsive to Malay Nationalism.

Federalism in Malaysia under the constitution of 1957

Under the constitution of 1957 Malaysia is a parliamentary federation. The Parliament of Malaysia / the national legislature of Malaysia is a bicameral legislature consists of two houses, the Dewan Rakyat House of Representatives and the Dewan Negara known as the Senate).

Malayan federation, in Malay Peninsula had been operating under the federation of Malaya Agreement 1948 for eight years, i-e 1948 to 1956. Still there were questions raised in the minds of people regarding the policies. In 1956 the 'Reid Commission' was appointed by her Majesty the Queen of England and their Highnesses the Rulers (Musa, Nawi, Alias, 2014). The main question was of distribution of power between Central government and its federating Units. While drafting the constitution the Reid Commission had given one reference regarding the division of Powers that to make recommendations for a federal form of constitution, which would include provisions for (ibid).

1. The establishment of strong central government with the states and settlements enjoying the measures of autonomy and with the machinery for consultation between the central government and the states and settlement certain financial matters to be specified in constitution (Rudner, 1976) .

The Malaysian Constitution of 1957 previously consisted of three lists of legislative namely the federal list, the State list, and the concurrent list (Musa ,Nawi Aliyas,2014), when Sabah and Sarawak became the part Malaysian federation , the two other legislative lists, the list II-A, supplement to state list and the list III-A, supplement to concurrent list for Sabah and Sarawak (Ibid) were added to Malaysian Constitution. The federal list includes the powers of 27 areas; the main areas are health and finance, foreign affairs, internal security, citizenship, administration of justice and education. The state list contains 12 areas of power; main are local government, Islamic family law, agriculture land and forestry.

The concurrent list is comprised of shared powers between federal and state governments. The concurrent list includes the powers of 9, matters, including town and country planning, culture, social welfare, public health, scholarships, sports, and housing etc.

In 1896, when the federation was introduced to four Malay states, Selangor, Perak, Pahang and Negeri Sembilan, before this setup of federal system, the states were used to enjoy the powers of all the administration areas included in federal, states and concurrent lists. The federal system, as established in 1948, had centralized legislative powers but decentralized administrative responsibility to the states. (MEANS, 2005). According to Musa Nawi and Alias that with the introduction of federal system, it seems that states are losing most of their powers and ended up by being highly dependent upon the federal government (Musa, Nawi, and Alias,2014). But professor Jayum Anak Jawan says, that from a positive point of view, federal government has power on general matters and where the interest in them involves more than one state such matter may require uniformity across the country, on the other hand ,the states hold power over matters that are regional or restricted to a particular state (jawan,2009,). The power was given to both, the state governments and the federal government that they can delegate their powers to each other by the agreements which will be commence through an executive action, because of this

feature the federal system in Malaysia became more flexible and it also enhanced the authority of federal government.

Federalism in Malaysia in 1963

Elections were held in North Borneo in 1962. On other hand, elections in Sarawak taken place in 1963. However, formation of Malaysia was rejected by the governments of the Brunei, Philippines and Indonesia for its own reason. These three countries were not willing to join Malaysia. The UN Secretary-General appointed a Mission to the Borneo States to conduct a survey. The survey was on whether the Malaysia proposal had the backing of the people of the North Borneo and Sarawak. Malaysia was established on 16 September 1963 and the Federation of Malaya 1948 was replaced. When the two states in Borneo Island i.e: Sabah and Sarawak joined Malaysia willingly "There was strong reason why North Borneo and Sarawak involved in the formation of Malaysia. Security, communist threats, decolonization and United Nations Resolution 1514 (1960) are the main reason of it (Misban& Mukhtaruddin, 2020) .

In 1963 the federation Of Malaya expended to include the state of Singapore, Sarawak, and Sabah formerly (North Borneo), which had been under British Rule and were now facing independence (Ibid).

These both states joined for formation of Malaysia on the two conditions:

- (1) That state rights will be safeguarded in Malaysia
- (2) That the promise for special protections for the people of new states who will join Malaysia.

In response to these conditions the constitution of Malaysia introduced on the Merdeka Day on 31 of August in 1957 'as constitution of Federation of Malaysia' was modified to safeguard the Sabahan and Sarawakian rights.

Certainly, Malaysia has two different dates of celebrating its country, first; National Day (Hari Kebangsaan 31st August) and second; is Malaysia Day (Hari Malaysia 16th September) (Misban,2020) . The formation of Malaysia was the result of an agreement between West Malaysia (Peninsular Malaya), East Malaysia, the states in Borneo Island like Sabah and Sarawak and the Labuan Island, Singapore and the British Colonial government. It is known as the 'Malaysia Agreement' that included 18 and 20 points and made promise to the people of Sabah and Sarawak before the emerging of new state of Malaysia.

On 3 November 2021, the Malaysian government tabled four constitutional amendments relating to Sabah and Sarawak, which purport to realize the terms agreed to under the Malaysian Agreement 1963 (MA63) (Neo,2021)

The first amendment concerns Article 1(2). The proposed amended Article 1(2) would specify that the States of the Federation shall be (a) the States of Malaya and (b) the Borneo States, namely Sabah and Sarawak. It bears echoes of an earlier version of this article, which had listed the Federation as comprising three groupings: (a) the eleven states in Peninsular Malaysia that constituted the former Federation of Malaya (1948-1963); (b) the Borneo States, namely Sabah and Sarawak; and (c) the State of Singapore. This version was amended when Singapore became an independent state in 1965. The current version of Article 1(2) was the product of a further constitutional amendment in 1976 and lists all states within the federation under a single category in alphabetical order. This effectively

placed Sabah and Sarawak on equal footing with the other states in the Federation. The 1976 amendment was justified as necessary to create equality among states and ensure further unity within the federation, and received overwhelming support in the federal legislature, including the acquiescence of members of Parliament from Sabah and Sarawak.

The Malaysian federation combines the federal principle and the system of parliamentary democracy with constitutional monarchy. The Federal Constitution of Malaysia also provides for a monarch and elected leaders at Federal and State levels .

The federal principles guaranteed all the federating units for equal treatment. Malaysian federation government treated unequally to the states, particularly towards the oil producing states specific example of Kelantan. Although there is guarantee of equal treatment through the constitutional provisions. Article 8 of federal constitution of Malaysia says:

Article 8.

(1) All persons are equal before the law and entitled to the equal protection of the law.

(2) Except as expressly authorized by this Constitution, there shall be no discrimination against citizens on the ground only of religion, race, descent, place of birth or gender in any law or in the appointment to any office or employment under a public authority or in the administration of any law relating to the acquisition, holding or disposition of property or the establishing or carrying on of any trade, business, profession, vocation or employment.

(3) There shall be no discrimination in favor of any person on the ground that he is a subject of the Ruler of any State.

(4) No public authority shall discriminate against any person on the ground that he is resident or carrying on business in any part of the Federation outside the jurisdiction of the authority.

Conclusion

According to Musa Nawawi and Alias that with the introduction of federal system, it seems that states are losing most of their powers and ended up by being highly dependent upon the federal government (Musa, Nawawi, and Alias, 2014). History of federalism in Malaysia shows the federal system of Malaysia remained central biased. The distribution of powers in all the constitutions from federated Malay States (FMS), federation of Malaya 1948, (FMA) the constitution of 1957 (Merdeka) and even the amended constitution of 1963 is in a way that the central government enjoyed more powers as compare to the states. The main jurisdictions were given to the central government. during the formation of 1957 constitution, the Reid Commission was formed to prepare report for constitution of Independent Malaysia, recommendation under the Reid Commission Report 1957 also despite of decreasing the powers of central government has increased the powers of central government. This history in fact showed the intentions of behind the introduction of federal system in Malaysia that was political unification among the states and the equality for all the citizens in Malaysia, which is an essential feature of federalism.

References

- Anu, W. (1999). *The Malaysian Legal System*. Malaysia: Longman.
- Bakar, I. (2004). *Fiscal Federalism, The Study of Federal State Fiscal Relation in Malaysia*. British Library EThoS
- Bt Raja Omar, R. (2012). A historical perspective of federalism in malaysia and its effects on the current system of federalism. *internal journal of Business, Economics and Law*, I, 125-129.
- Elazar, D. J. (1994). *Federal system of the World; A Hand Book of Federal, Confederal and Autonomy Arrangements*. Harlow: Longman.
- Jawan, J. (2009). *Federation in Malaysia*, in Abdul razak Baginda(ed), *Governing Malaysia*, 19-98. Malaysian Strategic Research Centre.
- L Neo, J. (19 November 2021). Restoring Constitutional Equality to Sabah and Sarawak: Do the proposed Amendments to the malaysian federal Constitution Go Far Enough. [Constitutionnet.org/news](https://constitutionnet.org/news).
- Misrinah, M. (14-15 October 2020). *Federal Constitution: special Protection for Sabah and Sarawak*. The International Seminar on Regional Politics, Administration and Development. STISIPOL Raja Haji, Riau, INDONESIA.
- Munip, M. (2014, September 12). *The 1948 Federation of Malaya Agreement*. Retrieved August 12, 2020, from <https://helenang.wordpress.com/2014/09/12/the-1948-federation-of-malaya-agreement/>
- Musa, N. N., M, M., & Alias, N. U. (2014). *Malaysian Federalism and Equal Wealth Distribution: A case study on the state Kelantan*. Paper presented in workshop. World Congress of Constitutional Law 2014.
- Mustafa, F., Abdul, A. M., & Ahmed, N. (2018). *Dynamics of Contemporary Indian and Malaysian Federalism: An Over View*. *The Federal Lawyer*, 47-55.
- Pan Malayan Council of Joint Action is Formed. (2019, August 1). Retrieved July 12, 2020, from [History SG: An online resource guide: https://eresources.nlb.gov.sg/history/events/36770bbe-0e83-46ce-9157-58000638bf43](https://eresources.nlb.gov.sg/history/events/36770bbe-0e83-46ce-9157-58000638bf43)
- P.M, G. (2005). *A Hand Book of Federal Countries, Forum of federations*. Montreal: McGill-queen's University Press.
- Rudner, M. (1976). *The Structure of Government in the Colonial Federation of malaya*. *South East Asian Studies*, 13(4) , 495-512.
- Watts, R. (1964). *New Federations: Experiments in the Common Wealth*. London: Oxford University Press.