THE electoral results in March have stirred up great hope among many that it signals the birth of a "new politics", whereby race-based rhetoric seems to have faltered as the magic formula for a big win by the Barisan Nasional. Political observers are impressed by the fact that the proposal to replace the New Economic Policy (NEP) with needs-based affirmative action did not appear to be a political liability for Parti Keadilan Rakyat among the Malay voters. Those on the other side of the camp, on their part, talk about the loss of ketuanan Melayu for the same reason.

Public discussions on the abolition of the NEP link it up from time to time with Article 153 of the Federal Constitution regarding the special position of the Malays and natives in Sabah and Sarawak.

At times, it was even suggested that the abolition of affirmative action policies for the Malays was impossible due to the need to amend Article 153 of the Federal Constitution.

Closely related to this discussion is the charge of Malay ultra-nationalists that questioning the "special position" of the Malays amounts to challenging the ideology of ketuanan Melayu. There appear to be a lot of myths surrounding "taboo notions" such as the Constitutional provisions for the "special position".

Does doing away with the NEP necessarily mean challenging Article 153? Should the constitutional provisions regarding the "special position" be understood as the symbolic affirmation of ketuanan Melayu? What was historically the understanding regarding the "special position" in any case?

Written records of the inter-party discussions of the Alliance leaders indicate that the Constitutional provisions on the "special position" were understood more as a protective measure for the Malay community which was then socio-economically disadvantaged.

Significantly, in their oral submission to the Reid Commission, the Alliance leaders requested the insertion of a Constitutional provision for the review of the "special position" of the Malays 15 years after independence.

Though subsequently removed, this implies that the Alliance leaders themselves did not intend the provision to be a permanent feature of independent Malaya.
This perspective is also clearly articulated in the recent biography of the late Tun Dr Ismail Abdul Rahman, who even expressed his belief that, "as more and more Malays became educated and gained self-confidence, they themselves would do away with this 'special position' because in itself this 'special position' is a slur on the ability of the Malays and only to be tolerated because it is necessary as a temporary measure to ensure their survival in the modern competitive world".

Yet, why has it come to be interpreted as a symbol of Malay hegemony and a permanent, even defining, feature of the Malaysian nation?

We have the familiar story of the racial riots of May 13 1969, which subsequently led to the imposition of a prohibition on the questioning of a number of Constitutional provisions including Article 153.

Meantime, the NEP was formally launched, setting clear objectives to be achieved within two decades, such as attaining a more balanced ethnic distribution of occupational engagement and for Malay share in the ownership of business to reach 30 per cent by 1990.

While some argue that the NEP officially ended in 1990, many of its wide-ranging economic and educational policies, including the popularly euphemised "quota system", remain in place till today in all but name.

Over the decades, the comprehensive affirmative action programmes have transformed the socio-economic status of the Malay community as a social group, even though many poor Malays may not have benefited from it.

Nonetheless, it was not successful in uplifting the overall socio-economic conditions of natives in Sabah and Sarawak and the Orang Asli in Peninsular Malaysia (who are intriguingly not mentioned explicitly as being included within the provisions of the "special position"), as well as the poor in other communities.

More insidiously, the initial socio-economic justifications for these measures have over time shifted to the argument of "indigenous entitlement" or right. It is only when affirmative action came to be viewed as a form of "indigenous entitlement" that the call for reforms or abolition of the NEP has been interpreted as a challenge to ketuanan Melayu.

Does a revamp of the NEP necessarily entail the amendment of Article 153 of the Federal Constitution?

Article 153 addresses the issues of reservation of quotas in respect of scholarships and other educational facilities or training privileges, positions in the federal public service and the granting of permits or licences for the operation of any trade or business for Malays and the natives of Sabah and...
Sarawak.

Nonetheless, figures for the quota are not specified, but are left to the discretion of the Yang di-Pertuan Agong as he deems "reasonable". In addition, clause 1 of the Article entrusts to the Yang di-Pertuan Agong the responsibility to also safeguard the "legitimate interests of other communities" in the same breath as safeguarding the special position of the Malays and natives in Sabah and Sarawak.

Notable is the fact that five out of the 12 clauses of Article 153 set out to limit the scope of its application.

They provide that the Constitutional provisions with respect to the special position should not deprive or restrict other communities of their legitimate interests and continued enjoyment of the same public office, rights, grants, facilities or privileges which might reasonably be expected in the ordinary course of events.

It could be argued that in order to respect the Constitutional spirit, the translation of this so-called "special position" into practical measures by the policy-makers should judiciously ensure that they are perceived as "reasonable", equitable and just by society as a whole.

The original spirit of the NEP, as defined by its twin objectives of the restructuring of society and the eradication of poverty regardless of race, abides by this same sense of fair play and social justice.

While Article 153 does provide the Constitutional basis for affirmative action in favour of the Malays and natives in Sabah and Sarawak, there is no ground to suggest that doing away with the NEP necessarily requires the amendment or repeal of Article 153.

While we cannot stop politicians with vested interests from linking up the NEP and Article 153 with the concept of ketuanan Melayu, we should at least be able to evaluate their discourse for what it is worth.

And it is apparent from a study of Article 153 of the Federal Constitution that such a linkage has no real basis whatsoever.

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