Universiti Teknologi MARA and Constitutional Idolatry

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ABSTRACT

University Teknologi MARA (UiTM) exists as a statutory body by virtue of an Act of Parliament (Act 173) and it is regarded as a special instrument to further the objectives of the quota provision under Article 153 of the Federal Constitution. Unfortunately, an examination of its policies would reveal severe inconsistencies and contradictions with the law. However, this state of affairs is a perfect example of the "living law" as opposed to "constitutional idolatry" in which the real workings and understanding of the Constitution do not always align perfectly with the content of the Constitution. This paper proposes to explore these legal issues, using the legal doctrinal and theoretical analysis as its research method. An examination of the UiTM controversy by this paper would demonstrate the influence and effects of sociolegal jurisprudence and postmodern jurisprudence. In sociolegal jurisprudence, law must also be examined from the actions of individuals and institutions, while in postmodern jurisprudence, it denies the impartiality of "law" and it also exposes the reasons for any kinds of legal comprehension. Hence this paper would prove that merely applying legality based on the law is an inadequate analysis and response to the legal and constitutional problems surrounding UiTM.

Keywords: UiTM, constitutional idolatry, constitution, jurisprudence, law

INTRODUCTION

The Federal Constitution of Malaysia, being the highest law in Malaysia, provides for a quota system in its Article 153 to assist the Malays and the natives of Sabah and Sarawak (*Bumiputera)*. Part of the mechanisms of this quota system is the establishment of the *University Teknologi MARA* whose purpose is to be an instrument of the quota system. Instead of conforming to the law, some policies in UiTM are arguably unconstitutional and unlawful. Firstly, it still maintains its policy of keeping its enrolment only for the Bumiputera students. Secondly, UiTM still maintains the policy of using English as its main course of instruction. Thirdly, it allows the enrolment of international students, albeit only in its postgraduate programmes, yet at the same time prohibits non *Bumiputera* students from enrolling in any of its academic programmes. Despite the clear provisions in the Federal Constitution and related judicial decisions, these policies are still safeguarded and maintained in UiTM. While "Constitutional Idolatry" insists that one must not expect absolute conformity with the written constitution, there is a need to explore the jurisprudence of this disjuncture in order to maintain fidelity to the Federal Constitution. This paper proposes to examine this problem. The aim of this paper is delve into the reasons for this unconstitutionality. The research objectives of this paper are to determine and assess the scope of these unconstitutional policies. Specifically, this research paper proposes to answer the following questions:

1. What laws govern such policies
2. How such policies have been justified by the stakeholders
3. How selected jurisprudential theories could be applied in this problem

LITERATURE REVIEW

There would always be a disjuncture between "law in the books" and the law that is practiced and accepted by people and institutions in real life (Pound, 1910) and that is also important to look at the "living law" instead of merely looking at actual rules (Erhlich, 1936). This is particularly true with written constitutions in which there is a difference between the Capital "C' and the small "c", the big "C" referring to the actual written constitution

and the small "c" referring to other things outside the written constitution such as principles, culture and practices which is why a complete study of the constitution must cover more than just the content of the written constitution itself. (Thio , 2012) This was further extended on another level in which an absolute reliance on the Constitution mirroring "worshipping the Constitution" has been criticized as constitutional idolatry. (Balkin, 2010) A similar attack was continued in looking at how total reliance on the Constitution was merely done performatively in the furtherance of a certain political agenda. (Jones, 2016). A similar affirmation was made regarding how constitutional idolatry is often weaponized by politicians. (Lin, 2024) In the context of UiTM, it is an instrument of the quota system in the Constitution. But in reserving the enrolment of UiTM only for the *Bumiputera* students, using English as its main course of instruction and allowing the enrolment of international students in its postgraduate programmes, these policies are are arguably unconstitutional. (Shaari, 2011). What is missing from these writings are the application of sociolegal and postmodern jurisprudence to this legal phenomenon. While the earlier analysis on "law in the books" tacitly touched the surface of sociolegal jurisprudence, it does not explain how and why the university, academics, alumni association and respective Higher Education Ministers continually ignored the related legal provisions and judicial decisions on this issue. Also, the literature fails to take into account of the workings of a constitution in a postcolonial set up which was inundated with multi ethnic and multi religious affiliations.

METHODOLOGY

This paper is legal doctrinal research. (Varuhas, 2023) It proposes to examine the law consisting of provisions of the Federal Constitution and statute together with the judicial decisions in order to state "what is the law". Since it is a public law research, it would also examine the input from institutions such as the public statements from the officials of the university and the report of the Parliamentary proceedings in the Hansard.

Constitutional Provision of the Quota System on the Special Position of the Malays and the Natives of Sabah and Sarawak.

No legal provisions exist that declares UiTM is only reserved for the Malays and the natives of Sabah and Sarawak. However, since section 1A of the UiTM Act states that "The University Teknologi MARA is established pursuant to and in accordance with the provisions of Article 153 of the Federal Constitution", Article 153 therefore needs to be looked into as to whether it allows the wholesale and complete reservation of an entire public university for the Bumiputera students.

Article 153 provides for a quota system for the benefits of the Malays of Peninsular Malaysia together with the natives of Sabah and Sarawak. The reservation of quotas in governmental positions, education and training, university enrolment, business permits and licenses for the Bumiputera however is not a complete carte-blanche power possessed by the government. Under Article 153(2), such reservation must be done in reasonable proportions. While Article 153(1) entrusts the King (or the Yang Di Pertuan Agong) with this responsibility, the King also has the responsibility to safeguard the "legitimate interests of other communities". Also, since the King is a constitutional monarch, His Majesty's powers under this provision is subject to the advice of the government, in which Article 153 must be read with Article 40 of the Federal Constitution which states that "in the exercise of His functions under this Constitution", His Majesty must upon the advice of the government.

History of the Constitutional Provision

Some would say that the "special position of the Malays" imperative could be traced to the British colonialism since the earliest mention of this concept was in the Frank Swettenham's book "*The Real Malay*" in which he wrote that the Malays were "the heir to the inheritance" (Swettenham, 1899). But like any other writings produced by Western colonialists, his writings need to be deconstructed from their Orientalist oeuvre (Alatas, 1977). In the same book, he chastised the Malays as lazy, incompetent businessmen and spendthrift. Hence it would not be plausible for his opinion regarding "heir to the inheritance" to be taken at face value. While Frank Swettenham's opinion might be implied to mean that the British colonial power had deemed the welfare and interests of the Malays would be protected by the colonial power, in reality that was far from the case.

If the British had been so concerned with the welfare and the interests of the native Malay populace, it would be surprising to note that the colonial power had caused the backwardness of the Malays in all spheres of economic

activities. In education, the British policy regarding Malay schools was simply to produce "better farmers and fishermen" with substandard curriculum as opposed to the English schools which provided a real educational system for upward mobility. The British did establish a residential school, the Malay College of Kuala Kangsar (MCKK), that provided English education for the Malays and they also created a special category in the colonial governmental service, the Malayan Administrative Service (MAS), that was reserved only for the Malays. However, MCKK was only reserved for the sons of the Malay nobility and as for the MAS, it was only for the Malay students who had passed the required examinations at MCKK (Yeo, 1971) Western colonial powers would always favour the local elites since western colonization would not be possible without the collaboration of such groups (Fannon, 1963). Next during the interregnum, the British colonial power attempted to influence the non-federating Malay states into joining the Federated Malay States by declaring their concern for the welfare and interests of the Malays and while such policy was more towards appeasing the Malay Rulers, it could not hide from the fact that the it was just a mere lip service (Loh, 1972). Around World War Two, the British declared the same policy , in which the welfare and the interests of the Malays were of paramount importance (Wade, 2009). This was followed through with the guarantee made in creating the Malayan Union in 1946 which guaranteed that "it will be the policy to safeguard the rights of the Malay people in matters of land reservation and in the facilities for education and progress" (MacMichael, 1946). This guarantee sounds hollow particularly when the Malays had no access to sound education as provided in the English schools and that such English schools were only concentrated in the Chinese predominant cities instead of in the Malay villages.

The *Malayan Union* was abandoned later due to protests from the native Malays and was replaced by the *Federation of Malaya Agreement 1948*. In this Agreement, for the very first time "special position of the Malays" has been acknowledged and recognized in its Article 19(1)(d). However, this provision was not just about the welfare of the Malays since it entrusted the High Commissioner to "safeguard the special position of the Malays and the legitimate interests of other communities". Later in the run up towards independence, the Reid Commission was set up to draft the Constitution for this new polity in which one of its terms of reference was to include a provision to safeguard the "special position of the Malays and the legitimate interests of other communities". In paragraph 163, the Reid Commission confessed the difficulty of bestowing special privileges upon one community which was against the right to equality. In paragraph 164, the Reid Commission found that the" special position for the Malays" had long ago been recognized by the colonial power such as the quota system in education, public service, business licenses and permits and the Malay reservation land system. However, the Reid Commission's statement that the "special position of the Malays" had been reaffirmed by treaties entered into between the Malay Rulers and the British must be further and critically explored since such treaties only provided for the creation of the British Resident/Advisor system. In the previous paragraphs it was clear that it was only a policy in which it was not even seriously carried out thus leaving majority of the Malays in poverty during British colonialism. The National Alliance of Malaya proposed that a review would be made 15 years after independence and the Reid Commission agreed with such a proposal (Fernando, 1995). After a few changes due to discussions and negotiations and after the Federal Legislative Council and the State Legislative Councils in Malaya expressed their agreement to the independence plan together with the draft of the Constitution, Malaya finally became independent in 1957 with its own Federal Constitution which provides for the "special position of the Malays and the legitimate interests of other communities" (Ibrahim, 1974).

While Article 153 entrusts this safeguarding responsibility on the King (*Yang Di Pertuan Agong),* as a constitutional monarch His Majesty does not have any personal discretion to act regarding this matter. In creating the position of the King, paragraph 58 of the Reid Commission Report clearly stated that His Majesty would be a constitutional monarch who acts on advice. Next, paragraph 167 of the Reid Commission Report further stated that in safeguarding the "special position of the Malays" , the King was to act on the advice of the government. The Reid Commission Report was further followed by a White Paper from the British government entitled "*Constitutional Proposals for the Federation of Malaya 1957*". In this White Paper, paragraph 54 reiterated the principle that the King "should act on the advice of the Cabinet" on matters relating to the "special position of the Malays".

Next, in the negotiation to establish "Federation of Malaysia", further changes were made to the Constitution. Firstly, due to paragraph 28 of the *InterGovernmental Committee Report of 1962* which required that the constitutional provision of "special position of the Malays" must also be applied to the natives of Sabah and Sarawak, the *Malaysia Bill* was tabled in Parliament to affect such changes and the Bill was passed by the *Dewan*

Rakyat on 20 August 1963 and was consequently passed by the Dewan Negara on 21 August 1963. The phrase "*Natives of Sabah and Sarawak"* was formally inserted into Article 153 via a constitutional amendment in 1971.

After the racial clash and the declaration of emergency on 13 May 1969, Parliament resumed its sitting in 1971. Its first order of business was to pass a constitutional amendment relating to some sensitive issues in the Constitution in article 10 regarding freedom of speech and Article 153. Prior to the tabling of the constitutional amendment *Bill* in Parliament, the government published a White Paper entitled "*Towards National Harmony*" which the objective of educating Malaysians regarding the rationale of amending the related provisions in the Constitution. The content of this White Paper was reiterated in *Dewan Rakyat* during the tabling of the constitutional amendment *Bill* on 23 February 1971. The Malaysian government stressed that Article 153 was simply a quota system targeted to address poverty in the marginalized communities. As an example, the government pointed out that while scholarships could probably be given to all the Malay students in universities, it would be manifestly unfair "since scholarships to qualified Malays should awarded on the basis of competition among themselves an on a means test" (Hansard, 1971).

UiTM and Its Role as an Instrument of the Quota System under the Constitution

The existence of UiTM could be traced to the RIDA Training Hall that was set up in 1956 to offer trainings to the *bumiputera* students. In 1976 it was finally incorporated under an Act of Parliament under the new name of "MARA Institute of Technology" (Act 173). The MARA Institute of Technology Act 1976 did not reserve ITM only for the bumiputera students. However, it maintained the enrolment policy of admitting bumiputera students only. Next, after the functions of a university were bestowed upon ITM via a statutory amendment in 1996, Act 173 was further amended in 2000 to change its name to UiTM. While UiTM and its predecessor ITM have steadfastly kept to the policy of bumiputera students only reservation, such a policy was only declared in the Hansard of Parliament in which both ITM Act 1976 and the current UiTM Act do not contain any such declaration of reservation. When the ITM Bill was tabled in Dewan Rakyat by the Deputy Prime Minister who also the education minister on 14th and 15th April 1976, the Deputy Prime Minister clearly the intention of the government to reserve ITM on for the Bumiputera students (Hansard, 1976). The same intention was reiterated when the ITM Bill was further tabled in the Dewan Negara on the 4th May 1976. Later, when the ITM Act 1976 was amended, the government introduced a new section (section 1A) to declare that "The University Teknologi MARA is established pursuant to and in accordance with the provisions of Article 153 of the Federal Constitution". The government's intention in inserting this new provision was to "maintain the identity and objective of the establishment of ITM" of which right from its inception has only been for the Bumiputera students only (Hansard, 2000).

The policy of the absolute reservation of UiTM for bumiputera students could only be formally traced to the Hansard and Act 173 makes no mention of this. While judges could refer to the Hansard in order to glean the "intention of the legislators", it is not binding upon the judge. In Malaysia, under Article 121(1) of the Federal Constitution, judges are bound to follow "federal law". "Federal Law" as defined in Article 160 of the Federal Constitution and the Interpretation Acts of 1948 and 1967 (Act 388) do not refer nor include Hansard. This is the real problem concerning this policy since it is not supported by law. While the intention of the government in inserting Section 1A into the UiTM Act was to maintain and protect the reservation policy of student enrolment by ostensibly protecting it under the Constitution, the actual words used in Section 1A only state that UiTM is " …established pursuant to and in accordance with the provisions of Article 153 of the Federal Constitution". With reference to Article 153 of the Federal Constitution as a quota system, the logical analysis that needs to be done is looking into whether reserving an entire student enrolment in a publicly funded university could be justified under a quota system which says that "reservations must be done in reasonable proportions".

While the Constitution is silent on the actual definition of a "quota", Justice Hamid in his "Note of Dissent" in the Reid COmmision Report offered such a definition in paragraph 10(b) : *"…a proportion of the total number of persons to be appointed of places to be filled…*". Henceforth it should be clear to any intelligible human being that the meaning of quota including reservations under the Federal Constitution is based on "proportions" instead of a wholesale absolute reservation. Also, any kind of "reservations" policy under the Constitution must strictly adhere to the provisions of Article 153, as the Court had held in *SP Boon Seng Project v Pengarah Tanah dan Galian Negeri Kedah & Anor* [2018] 8 CLJ 216. In this case, the Court held that the policy which designated

certain properties as "*bumiputera lots"* in a housing project was unconstitutional since it had no link at all to the actual provision of Article 153. Furthermore, there is often a misunderstanding regarding the relationship between a governmental policy and the Constitution. In Malaysia, unlike the United Kingdom, the constitution reigns supreme instead of parliamentary supremacy nor even executive supremacy. In *Lee Bak Chui & Ors v Kerajaan Negeri Kedah Darul Aman & Ors* [2024] 11 MLJ 556, the Court held that governmental policies are subject to the Constitution.

Selected Controversies Relating to UiTM

In the 12th General Election of 2008, the political party of UMNO lost its political control in the state of Selangor, and a new State Government executive from the formerly opposition was sworn in. On 9 August 2008, the newly sworn in Chief Minister (*Menteri Besar)*, Tan Sri Khalid Ibrahim was asked a question by a reporter regarding the enrolment of foreign students and non-*bumiputera* students in UiTM and he replied that there should be a 10% quota in UiTM's enrolment with regards to such students (Selangor Menteri Besar Press Statement, 2008). His reply was deemed controversial by the mainstream media and it immediately became a public issue (Simrit Kaur, 2008). A massive students demonstration of UiTM students around Malaysia was carried out (The Star, 2008). In Shah Alam, it was led by the UiTM Shah Alam students union and the students marched from the Shah Alam campus towards the Selangor State Secretariat building protesting the *Menteri Besar*'s statement (Tan, 2017) . It was during this episode that UiTM was given the moniker of "the last bastion for the *bumiputera*" ("*Benteng Pertahanan Terakhir Bumiputera*". The UiTM administration continued the fervour of this issue by organising a multitude of talks regarding what had been perceived as an "insult" to the *bumiputera* community. Interestingly in a talk delivered by Tun Mahathir that was delivered in UiTM Terengganu regarding this issue, the ex Prime Minister exhorted UiTM students to enrol in universities which had an open enrolment policy (MNGS Shaari, 2011). The Vice Chancellor's contract was not given a renewal by the goverment and he was replaced in early 2010. However, the "UiTM only for the *Bumiputera* students" issue did not peter out under the new vice chancellor.

In 2015, Tan Sri Arshad Ayub who was the pro chancellor of UiTM, spoke on the need to open up UiTM postgraduate students enrolment to non-*Bumiputera* students (The Star, 2015). He reasoned that such a policy was needed in order to produce UiTM graduates who are more competitive internationally instead of being mere local heroes (*"jaguh kampung*"). There was no major backlash against the pro-chancellor's statement in which the only noticeable objection to his proposal came from *PERKASA*, a Malay rights non-governmental organisation (The Malaysian Insider, 2015), Tan Sri Arshad Ayub reiterated his proposal for the opening of UiTM postgraduate programmes for non-*Bumiputera* students. The Vice Chancellor of UiTM responded by saying that UiTM would still maintain its enrolment policy due to the fact that "… many Malays and Bumiputeras, especially from underprivileged families in rural areas still need UiTM" (Bernama, 2019)

In 2018, after the 14th General Elections during which UMNO and its political alliance lost their political control of the country, a new formerly opposition government was sworn in. HINDRAF2.0 (Hindu Rights Action Force 2.0), a group issued statements in asking for public universities to have a quota for Indian students including UiTM. The UiTM Alumni Association (PAUiTM) responded by pointing out that the enrolment policy of UiTM should be maintained as long as there exits vernacular schools (schools using Mandarin and Tamil as the main course of instruction instead of using the Malay language which has been designated as the National Language of Malaysia)(the Malay Mail, 2018) . The UiTM Alumni Association also launched an online petition to garner support in protesting the call to open up the enrolment of UiTM for non-*Bumiputera* students (Annuar, 2018) Later, Hindraf2.0 was denounced by Hindraf, which claimed to be the original and genuine group under the banner of "Hindu Rights action Force" (Zurairi, 2018) It was claimed that Hindraf2.0 did not exist.

In 2024, in the midst of a shortage of cardiothoracic surgeons in Malaysia, the Malaysian Medical Association urged UiTM to open the admission to its cardiothoracic surgery programme for non-*Bumiputera* students (CodeBlue, 2024). This was due to the problems faced regarding the rejection of the recognition of the Edinburgh Royal College of Surgeons "parallel pathway" and also due to the fact that the only locally recognized cardiothoracic surgery postgraduate programme was in UiTM (Lyn, 2024). But Minister for Higher Education maintained the stance that UiTM is only for *Bumiputera* students (Solhi, 2024). In the midst of this controversy, the Students Representative Council of UiTM Shah Alam predictably protested the call to open UiTM's cardiothoracic surgery programme to non-*Bumiputera* students (Freemalaysiatoday, 2024).

Misrepresenting the Constitution

In all of the above controversies, none of the main characters attempted to adequately deal with the clear provision and analysis of Article 153. All of them have been merely content in parroting out the fiction that "UiTM is allowed by the Federal Constitution to reserve its entire student enrolment for the *Bumiputera* students under Article 153". There had been no attempt to locate its operation under a quota system. Since the Federal Constitution is a public document which details the rights and responsibilities of the individual and the State and each party towards each other, it is understandable that people with no legal background have been drawn into this issue and confidently declaring his or her opinion in public no matter how erroneous such views are. These multitude of opinion that are devoid of legal content have been allowed to be traded in the marketplace of opinion. Pursuant to the admonishment regarding "constitutional idolatry", this state of affairs need to be understood as reflecting the nature of a written constitution in which it is open to various individual opinion and views either based on reason or strong feelings or even a combination or both.

Sociological jurisprudence would point out the fact that what is in the "hardware" of legal provisions might not be reflected in the reality that exists in society. Postmodern jurisprudence similarly cautions that a person's understanding of the law might be different and unique according to each own's peculiarities and circumstances. In fact, the idea of a "living constitution" similarly advises legal scholars that what is written in the Constitution might not be the same with what is understood and lived by in the social realm (Strauss, 2010). Therefore, since legal education is a privilege accorded to the very few, it necessarily follows that majority of people in Malaysia including those in academia and politics would have no real understanding nor a real appreciation of the constitutional issues involved. But in the context of the UiTM constitutional issue, the grasp on "constitutional relativism" as the justification needs to be whittled down. This is especially so when none of the main characters in the related controversies had presented coherent views which are congruent with both the Constitution and the history of the Constitution. In fact, such incoherent views had been consistently maintained as "based on the Constitution".

On another level, such misrepresentation of the Constitution could be based on the idea of an "invisible constitution" regarding "unwritten, extra-textual influences surrounding the interpretation.." of the Constitution (Tew, 2018) With this concept, there is a great temptation to create legal principles and understanding which are not provided for by the written constitution. However, such created "constitutional fiction" are definitely not created out of the thin air. Many things need to be critically examined whenever a plea is raised on the "invisible constitution". The first matter which must be critically examined is the motivation : what is the reason in pleading that such a view is based on the idea of "invisible constitution". Secondly, who benefits under such views? The answer to these two questions would always be related to the social, economic and political concerns of the polity since the law is note neutral and that it does not operate in a vacuum. In the case of Article 153, the objective of a quota system is to address the problem of poverty among the *Bumiputera* community. Any other explanations which appear to be "extra constitutional" which refuses to deal with the definition, scope and history of such a quota system should immediately be questioned. In the context of a post-colonial society like Malaysia, any reasons and explanations regarding the quota system are surely a cause of concern for everyone since the quota system do not just affect the *Bumiputera* community. While the *Sedition Act* 1948 prohibits the questioning of the quota system, it allows anyone to advise the government regarding the defects in the implementation of such policy with the intention to correct such defects.

This issue on UiTM has often been viewed from the perspective of a "social contract" instead of looking at it from the legal and constitutional perspective. Article 153 (and by extension, the UiTM *bumiputera* enrolment policy) has been understood to be part of the "social contract" agreed upon by the different ethnic communities in Malaya (Malaysia) during the negotiation process leading up to the independence in 1957 (Tay, 2018) While arguments based on "social contract" would have no legal validity when they are not based on specific legal provisions, it is difficult to disregard the influence of this type of understanding in the public sphere when such arguments have often been made by politicians, government officers and even some academics.

Comparison to India's "Minority Institution" and Singapore's "Meritocracy"

Previously in another essay, the nature of UiTM as "an instrument of the quota system under the Federal Constitution" had been compared to the status of the *Aligarh Muslim University (*AMU) in India (MNG Shaari,

2011). Article 30 of the Indian Constitution allows minorities to establish and administer their own institutions. AMU was established by a Muslim philanthropist for the muslim community in India in 1877 and it was later incorporated under the *Aligarh Muslim University Act 1920* in 1920. In 1965, the AMU Act was amended to give more powers to the executive council of the university which also lessened the powers of the AMU court. This amendment was subsequently challenged and the Indian Supreme Court held in the case of *Azeez Basha v Union of India* AIR [1968] SC 662 that since AMU was established by the Indian government under an Act of Parliament, AMU was not a "minority institution" under the Indian Constitution. The Indian government attempted to bypass this decision by amending the AMU Act in 1981. The amendment redefined AMU as "an educational institution established by the Muslims in India" and amendment also included another addition regarding the promotion of the "educational and cultural advancements of the Muslims of India". This amendment was later declared by the Allahabad High Court as unconstitutional in the case of *Dr Naresh Agarwal v Union of India* 2005(4)AWC3745. Part of the legal issue in this case was whether the 50 per cent reservation of the seats in the AMU's medical postgraduate programme for Muslim students was unconstitutional. In 2024, in the case of *Aligarh Muslim University v Naresh Agarwal &Ors* [2024] INSC 856 the Indian Supreme Court by majority overturned the earlier *Azeez Basha* decision. The majority decision looked into the scope of Article 30 of the Indian Constitution and held that among other things, the "minority" character of an educational institution was not extinguished by its incorporation under an Act of Parliament. The facts of the AMU case could be said to mirror the UiTM issue for instance regarding who set up the institution, who had administrative control over it and for whose benefit does it serve to work for. Unfortunately, the AMU case was regarding its existence under Article 30 of the Indian Constitution. The Federal Constitution of Malaysia on the other hand does not have any similar provisions. In fact, under Article 8(5) which provides for exceptions to the right to equality in Malaysia, only religious institutions could claim this protection and UiTM is not a religious institution.

Next, the common mistake in comparing the Malaysian quota system to the "special position of the Malays in Singapore" is assuming that both are similar. It has never been the intention of the Singaporean government to have the same system of reservation of quotas for the Malays in Singapore. Article 68 of the *Malaysia Agreement 1963* clearly states that "*there shall be no reservation for the Malays in accordance with Article 153*" in Singapore. After its breakaway from the Federation of Malaysia, Article 152 of the Constitution of Singapore merely states that "*…it shall be the responsibility of the Government to protects, safeguard, foster and promote their political, economic, social and cultural interests and the Malay language."*. This Article 152 also does not confer any group rights to the Malays of Singapore and that it is merely a symbol of indigeneity which does not carry any legal rights as against the State (Tan, 2020). Singapore proudly claims that it values meritocracy, equality of opportunity and no special privileges for any groups (Neo, 2008). However, none of the mainstream scholarship regarding meritocracy in Singapore could hide the marginality and the marginalisation of the Malays in Singapore (Mutalib, 2011). Tania Li wrote on how the Singapore's government refusal to renew the employment of the Malays in the security forces had contributed enormously to the poverty and socio-political problems faced by the Singaporean Malays (Li, 1989). The analysis was continued further by Lily Zubaidah Rahim who wrote about the devastating effects inflicted upon the Singaporean Malay community when they were excluded from the State's National Service programme during the early years of the programme (Rahim, 1998). Despite the glowing reports on the economy and education system of Singapore, the racist colonial stereotypes regarding the Malays as lazy and lackadaisical have been continually weaponized against the Singaporean Malays (Lyons & Ford, 2009).

CONCLUSION

There is difference between what the law says and how the law is understood by the stakeholders namely the university and the politicians of the ruling political party. This difference is normal since the written law only exists on paper and that its meaning is given by the reader. Despite a steady source on the meaning and history of the law, the law has often been misrepresented. In some cases, this misrepresentation has been weaponised in which they falsely claim to protect the Constitution thereby utilising the mechanics of "constitutional idolatry". It should be questioned whether the weaponizing of the misrepresentation is a mere "innocent mispresentation" of the law or whether it is a concerted design by those involved in using the law as an instrument of and for political power. The Federal Constitution of Malaysia is owned by all Malaysians. It is not owned solely by any ethnic group nor by any institution. It goes without saying that the Courts have the power and duty

to interpret the Constitution, the Legislative body has the prerogative of enacting laws under the scheme of the Constitution and the Executive have the power to carry out any policies which are in accordance with the Constitution. But the Constitution does not leave out mere citizens from its scheme. Not only that the Constitution is a source of power, it is also the site for political contestations and negotiations. Therefore, a genuine framework for "constitutional literacy" (Visser & Jones, 2023) is urgently needed and also it needs to be safeguarded from abuses by politicians. (Sethi, 2024)

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