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PEASANTS AND THE LAW IN MALAYSIA

by

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The objective of this paper is more modest than what its title suggests. In pursuit of the request made by the organisers of the Seminar, I shall try to answer the question whether there are adequate laws to protect the peasantry or not, confining my observations mainly to the problems of land tenancy and rents. Therefore, the aim of this paper is first of all to discuss the general conditions and problems of the peasants and then to evaluate the effectiveness, or otherwise, of some relevant laws in protecting their interests or solving their problems.

Conditions and Problems

Simply defined peasants are those who depend predominantly on land for their livelihood. In most peasant societies the social economic and political life of the people are often associated with land and agriculture. In Malaysia, as in most developing countries, there seems to be a clear division between the rural sector, in which the peasant society is based, and the urban sector. Although there are social differences and distance between these two sectors, it does not mean that they are separate. In fact, they are closely interlinked, being part of the country or nation as a whole.

The peasant society is linked to the whole country through various political and administrative machinery of Government as well as different capitalist economic activities which have penetrated into the rural areas. At the same time it is also encompassed within the larger global system, which is presently dominated by the West. These links have been established either politically through past colonialism or economically through present-day imperialism.

The relationship between the urban and rural sectors, and further, between the developed and developing countries is described by some writers as a centre-periphery or metropolis-satellite relationship. This relationship is characterised by an unequal and dependent status which is often disadvantageous to the peripheral or satellite peasant groups. It has been argued

that such relationship, besides bringing about transformation may also cause further underdevelopment to the peasant societies in the Third World.

It would be misleading to regard the peasantry in Malaysia as being homogeneous. First of all, following various political and economic changes, migrants came into the rural areas. They consisted of those from surrounding islands, who, although from common Malay stock actually belong to different sub-ethnic categories, and those from overseas, especially China and India, who are of different ethnic origins from the Malays. Many of the migrants took up to working the land, but there are also a small number who involved themselves in other occupations mainly as shopkeepers and labourers. The result now is that ethnically, the peasantry is heterogeneous, although those of Malay origin still form the majority.

Secondly, owing to the different nature and degree of economic development that have taken place, a variety of agricultural systems have arisen in the rural areas. At least four systems may be easily identified, namely (a) communal or customary land system, (b) small-peasant farm system, (c) small-holding settlement system and (d) modern plantation system. Those who are involved in (a) are mainly the orang asli who live by hunting, gathering and also cultivating. As for those in (b), they form the majority in the rural areas; they live in traditional kampung, occupied mainly with rice, coconut and rubber agriculture and also fishing. In system (c) are those who have been settled in land schemes, which specialise mainly in rubber and oil palm. Finally, those in system (d) work in rubber or oil palm estates as labourers.

Thirdly, capitalist penetration and the extension of the market economy have resulted in the emergence of new functionaries such as landowners, shopkeepers and moneylenders, and the formation of a more stratified rural society. Based on the agricultural systems explained above, those in (c) are quite different from those in (d); the former largely owner-operators of economic holdings while the latter are agricultural workers. Economically, both are relatively better off than the majority in (b), who in turn enjoy much better socio-economic status than the orang asli in system (a). Even at the kampung level, those in the small-peasant farm system show differences in terms of their wealth, income, prestige and even

political influence. Based largely on their relations to the means of production, particularly land, the peasants may be categorised into three classes, namely, landlords, owner-operators, tenants and agricultural workers.

There are several problems that the peasants are faced with, but the most serious one is perhaps poverty. Although poverty is not as acute in Malaysia as in some other Asian countries, yet it is serious enough because it still persists despite efforts to eradicate it. Government figures show that the incidence of poverty is still high (around 30%) and highest especially in the agricultural sectors. The poorest of the poor are mainly among those in systems (a) and (b) mentioned earlier, because it is among them that we find the most people with insufficient or no land of their own, and so have to remain contented as small owner-operators, tenants or agricultural workers.

The root cause of poverty seems to be the existing peasant socio-economic structure which has inherited the worst from the remnants of feudalism and the encroaches of capitalism. At the production level there is unequal distribution in ownership of land, although the degree of concentration is not very high. Therefore, those who do not have enough or any land have to work on land belonging to others. The type of tenancy system existing as well as insecurity of tenure may further exacerbate the problems of the poor. At the marketing level, the peasants are exposed to institutions which can exploit through monopolistic and monopsonistic control. Furthermore, price fluctuations caused by external market forces add instability to poverty in the lives of the peasants.

Laws Affecting Peasants

There have been several laws introduced - many still in operation - within various states in Malaysia that affect the peasantry. These laws are not directly meant for protecting the peasants as such or helping them overcome the pressing problems they are faced with. We shall focus our attention only on two. The first is the National Land Code, 1965. This law indirectly affects the peasants in as far as it relates mainly to the questions of land, such as land tenure, registration of ownership and collection of revenue. There are several laws relating to land in various states

which were introduced during colonial rule; they can be viewed as part of the overall efforts to centralise administration under its control. The British introduced the Torrens System, which required land to be surveyed before alienation and ownership to be registered in the Land Office. This facilitated revenue collection. Through these laws the state or government was able to control not only land but the peasants who owned the land.

The existence of different laws in the states of Johore, Kedah, Kelantan, Melaka, Negri Sembilan, Pahang, Penang, Perak, Perlis, Selangor and Trengganu led to the desire to introduce a uniform land system. In 1965, by an act of Parliament the National Land Code was passed. This Act applies only to the above states and enforceable after notification in the Federal Gazette. It is aimed primarily "for the purpose only of ensuring uniformity of law and policy to make a law with respect to land tenure, registration of titles relating to land, transfer of land, leases and charges in respect of land, and easements and other rights and interests of land" (Malaysia, 1965: 1). Unless otherwise stated, the National Land Code does not affect provisions of laws relating to customary land, Malay Reservation, sultanate land, Padi Cultivators Ordinance, mining, and so forth (ibid : 2). The Act does not alter the position that land is still under the jurisdiction of the respective State Authority.

The National Land Code streamlines land administration and serves as a very handy guide particularly to civil servants. It is at once a legislative as well as an administrative device which can be effectively used to subordinate the peasantry under the heavy hand of law and bureaucracy. As in the case of many laws, the National Land Code is hardly comprehensible to the people, particularly the peasants, who by and large are quite illiterate. Of course it may be argued that certain provisions in the Act assure the peasants of the possibility of acquiring alienated land and to exercise their rights over any land registered under their ownership. But most of the time, as will be discussed later, the peasants become aware of the law only when its punitive aspects are imposed upon them. As in the case of many a law, the National Land Code may be viewed by the peasants as in no way protective of them, but instead can be a source of inconvenience if not oppression.

The second law is the Padi Cultivators (Control of Rent and Security of Tenure) Act, 1967. This is a piece of legislation that seems to be intended for the protection of peasants, especially those who work as tenants. This Act replaced the earlier version known as the Padi Cultivators (Control of Rent and Security of Tenure) Ordinance, 1955. There were several factors that led to the enactment of the 1955 Ordinance. Firstly, in the early fifties there was a marked fall in padi production in Malaya. The government then was concerned about this, and so set up a Committee in November, 1952, "to consider ways and means whereby the acreage planted under padi in the Federation and the yield per acre can be materially increased within the next three years" (Malaya, 1953 : 1). Six months later the interim Report of the Rice Production Committee was submitted. Among other things the Committee attributed the fall in padi production to the problem of insecurity of tenure of leased land, and the abusive practices of imposing 'tea money' over and above arbitrarily determined rents. Accordingly, the Committee recommended that measures to control other rents, as already provided by the Control of Rent Ordinance, 1948, should be extended and "followed in respect to padi land" (ibid : 46).

Secondly, it was found that the teething problems arising from the system of rents and tenure prevalent during that time not merely affected adversely the economic output of peasants without or with little land, but also threatened to cause social restlessness which could have serious political repercussions. Between 1949-50 and 1954-55, considerable increase in rents were reported especially in Kedah (16%) and Perlis (20%). More important, there was also an increase in area under cash agreements (Kedah 140%). The security of tenant cultivator was reduced substantially. Large parts of Malaya had become areas of tenant instability and presented a potential danger of agrarian unrest (Cf. E.H. Jacoby, 1961 : 125-6). It so happened that around the same time there was controversy and unhappiness caused by a government move to reduce the guaranteed minimum price of padi from \$17 per picul in the 1953/54 season to \$12 per picul in the 1954/55 season.

Indeed there were both economic and political reasons for having a law that can protect the peasants, particularly tenants. In 1955, following some unrest in Kedah, the Padi Cultivators (Control of Rent and Security of Tenure) Ordinance was passed. Among the main

provisions of this Ordinance was the registration of tenancy agreements, the establishment of local Committees to settle disputes and the restriction on the amount of rents. For the purpose of determining rents paid land was to be classified under three Classes - I, II and III. Tenants have the option of expressing rents (a) at 140, 115 and 70 gantang per acre for each class of land respectively or (b) in terms of one third of total crop.

The 1955 Ordinance was an inadequate legislation. It was ineffective and ignored by most of the states except Kedah, where there was at least an attempt to implement it. Even here the success was not significant. Some of the reasons for its ineffectiveness were:

- a. it required an "unnecessarily tedious time consuming and repetitious process of signing, attesting and registering tenancy agreements or memoranda annually", (Smith & Goethals, 1965 : 4)
- b. although there were Committees provided for to act as mediators for settling disputes, there was no adequate enforcement machinery to enable officials to initiate prosecution in cases of non-compliance; much depended on voluntary civil actions brought by those tenants and landlords with grievances", (ibid : 3)
- c. there was no authority that could be used for strengthening the social and economic position of the tenants; on the other hand there was a tendency for the Ordinance to reduce further the security of tenancy since "rents where lower than legal maximum (had) in some cases been increased", (Malaya, 1956 : 38)
- d. the Committee system for settling disputes between landlords and tenants was sometimes abused; the Committees could become "Landlords Courts where the tenants (were) on the defensive against eviction" (ibid : 38). At the same time the Ordinance did not remove "the illegal practices of extortionate rents, advance cash rents, cash deposits and other unbearable rent conditions". (E.H. Jacoby, 1961 : 126)

The Padi Cultivators (Control of Rent and Security of Tenure) Act, 1967, was passed with the hope of providing a more effective law than the 1955 Ordinance which it replaced. The basic objective of the Act remains unchanged, i.e. to improve cultivation and productivity of padi lands and thereby income of farmers. Like the 1955 Ordinance, the strategy of 1967 Act is to control (a) level and system of rent and (b) relations between landlord and tenant for security of tenure. Among other things the Act provides that:

- a. tenancy agreement must be in writing and for not less than three consecutive seasons,
- b. the agreement must be attested by the Penghulu or any officer of Division III and above, and must be registered by the landlord with the Registrar within 14 days,
- c. the State Authority will appoint a Committee with powers of a first class Magistrate to hear and determine applications made under Act or disputes arising out of tenancy agreement, and to make decisions or orders to give effect to the determination of application of dispute; and a Tribunal to hear appeal cases,
- d. the Minister of Agriculture will appoint a Chief Enforcement Officer who will be responsible for the enforcement and administration within the State of the provisions of the Act, and any number of Enforcement or Assistant Enforcement Officers with powers to investigate into cases of non-compliance, to prosecute offenders under the Act and enforce decision or order of Committee or Tribunal.

There is no doubt that the 1967 Act, as a legislative exercise, is a great improvement upon the 1955 Ordinance. But, unfortunately it has not been much more effective. Traditional rent and tenancy systems are still widespread, and not many agreements have been entered upon and much less actions have been taken under the Act. There are landlords who oppose the Act because it threatens to lower the rate of returns that they can get from their

investment on land. On the other hand tenants are often weak and disorganised; they fear retaliation or reprisal from the landlords, whose land they depend on for their livelihood, should they insist on signing an agreement that the landlords dislike. The consequences may be even worse if the tenants try to report their disputes with landlords over rents or tenancy to the Committee or Enforcement Officer. Being socially of lower status and usually enjoying less influence than the landlords, the tenants may have to suffer more for their actions. Furthermore, being generally more illiterate, the tenants are often less aware of their rights under the law; and even if they are aware, they are quite reluctant to resort to the law because it is sometimes regarded as an enigma.

Many states have not been too enthusiastic about the Act; this is especially so among those states which have very little land under padi. Even some states, like Kelantan, is not too keen about it. In the states which have implemented the Act, such as Kedah, Perlis and Province Wellesley, the enforcement of the Act is still not very effective, despite provisions for the Enforcement Officers. The number of these officers is still small, compared to the amount of area to be covered, and their supporting staff is inadequate. Furthermore, senior staff often go away on promotion without leaving behind their experience to their successors. At the same time conflicts, or at least misunderstandings, may occasionally occur between Committees or Tribunals, which are appointed by and responsible to the State Authority, and the Enforcement Officers, who are appointed and responsible to the Federal Minister of Agriculture. This conflict normally arises from the attitude prevalent among the States which tend to jealously guard their jurisdiction over land from the encroachment or interference of the Federal Authority.

Significance of the Laws

As pointed out earlier, the most serious problem facing the peasantry is poverty, and among the factors that cause it is lack or absence of land owned. Under the National Land Code state land may be alienated permanently or temporarily to peasants and other categories of people as individuals or in companies. Comparatively it is often much easier for influential people or companies to get land than the peasants. The latter are known to have to wait

for several years before their applications are even considered. There are some poor peasants without land who are given the rights of temporary occupation, but nothing in the law assures them of gaining permanent ownership of the land even if they have worked for long years.

In the past there have been many people who have been involved in opening land illegally. No doubt some of them belong to wealthy syndicates which operate the land for their own commercial ends; but there are many genuinely poor peasants who have been forced into illegal occupation after failing several times to get land through legal means. On a number of occasions these illegal occupants have been asked to leave the land or forced to be evicted. The National Land Code provides for such power of eviction. Illegal occupation of land has been viewed entirely as a legal matter and not as a manifestation of certain basic socio-economic problems. As a result, legal actions taken by the State on poor illegal squatters often display no consideration at all of the human as well as the social elements. As such, to the peasants (and squatters in urban areas too) the law is often punitive and oppressive.

This is more so when there also exist other laws, for instance the ISA, that can be imposed on peasants for taking actions - though in defence of their rights and interests - which are regarded to be illegal. Take for instance the cases of the Baling and Alor Star demonstrations in 1974 and 1980 respectively. Basically, the peasants demonstrated in both cases because of their discontent over prices of commodities that they produce, in this case rubber and padi. Their action, to a certain extent, may be viewed as one of the outcomes of their state of poverty, although certain political interests were also able to take advantage of it. What is important to note is that there are no existing laws which protect peasant commodity prices. There are no legal means through which the peasants can effectively assert their interests. So they resort to actions outside the law; and when they do so the heavy punitive hand of the law is slammed on them. A number of them were detained under the ISA, somewhat in the manner of an over-kill. A psychology of fear, or at least a distrust in the law, becomes widespread among the peasantry.

As for the Padi Cultivators Act, 1967, it meant more clearly for the protection of the poor peasants, particularly the tenants. This Act confines itself only to padi land, and is not effective. There is justification in focussing on padi, because by comparison the problems of rents and tenure are more serious in padi than say rubber. But this does not mean that there is no such problem at all in rubber. Perhaps the Act can gain wider response and become more effective if its provisions were to be extended to include all the different crops. But on the other hand it may be the poor experience in padi itself that acts as a constrain on the government to extend the powers of that law more widely.

Any act to control rents and ensure security of tenure by itself has limitations; it can never be effective in solving the basic problems faced by the peasants, such as poverty. As pointed out earlier, the root cause of poverty is more fundamental and entrenched within the socio-economic and political structure of society. That is why ad hoc or isolated measures seldom succeed. Just take a simple example of land ownership. In many developing countries, their economic and political structures allow for, in fact encourage, concentration of land in the hands of a few. In Malaysia, although there is inequality of ownership, the problem of concentration is relatively not very great. Unlike those countries where landlords own huge tracts of land and employ numerous people who work almost like serfs to them, in Malaysia it is rare to find rural landlords owning 50-100 acres of land. Nevertheless, it may be argued that since there is some degree of inequality of ownership, a law like the 1967 Act can only succeed in improving the socio-economic status of tenants if it is followed by redistribution of land.

At the same time redistribution and the Act are no guarantee against unfair or low prices of peasant commodities so long as the structure of the market is controlled by a few powerful people within and outside the country. In other words the market too needs to be restructured so that it will not be exploitative on the poor peasants. The point being made here is that in order to overcome the basic problems faced by the peasantry, fundamental structural changes have to take place,

socially and economically. There must be the political will to introduce these changes. Such will can only exist among people who are truly committed to champion the cause of the most disadvantaged and exploited segment of society, and who have the political power to undertake their commitment. There is no need to emphasize that such laws as the National Land Code and the Padi Cultivators Act will only have peripheral significance even if they are effectively implemented. As it is the Padi Cultivators Act is not at all effective, and despite it various problems faced by the padi farmers continue to persist.

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