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The present scenario of Malaysian industrial relations : accommodating or conflictual

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Abstract

Malaysian industrial relations (IR) were commented by both foreign and local researchers in the literature (Bahari, 1989, Arudsothy, 1990, Arudsothy and Littler, 1993, Jomo and Todd, 1994, Kuruvilla, 1996, Bhopal and Todd, 2000, Ramasamy, 2000, Todd and Peetz, 2001, Ayadurai, Yahaya and Zainuddin, 2002, Bhopal and Rowley, 2002, Suhanah, 2002, Mellahi and Wood, 2004, Parasuraman, 2004, Todd, Lansbury and Davis, 2004). Many of them commonly agreed that the role of the state on industrial relations policies is rather repressive to the union and favour employers. Therefore, in this paper the author will use Sharma's (1996) theoretical model on the extent of industrialisation and patterns of IR (1996:26) to analyse the emerging pattern of IR in Malaysia. The paper argues that currently the pattern of IR in Malaysia is rather conflictual than concession accommodating even though Malaysia is already in the advanced level of a semi-industrialised country and is to be considered as newly industrialised country (NICs) such as Taiwan, Singapore, and Korea very soon. Regarding labour policies, it strikes that some labour laws that have their origin in colonial and the post-colonial governments are applied up to the present day. This paper is divided into four parts. In the first part the theoretical model of Sharma on the extent of industrialisation and the patterns of IR will be presented. Second, the economic development of Malaysia will be highlighted briefly. Third, the issues on economic development and IR policies in Malaysia are discussed. Fourth, Malaysian IR policies are examined on the basis of Sharma's model, which was explained in Section One. The paper will conclude with the emerging pattern of IR in Malaysia.

Keywords

Present, Scenario, Malaysian, Industrial, Relations, Accommodating, Conflictual

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The Present Scenario of Malaysian Industrial Relations: Accommodating or Conflictual

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Abstract

Malaysian industrial relations (IR) were commented by both foreign and local researchers in the literature in the past. Many of them commonly agreed that the state's IR policies rather favour employers and repress unions. Therefore, the authors use Sharma's (1996) theoretical model on the extent of industrialisation and patterns of IR (1996:26) in this paper in order to analyse the emerging pattern of IR in Malaysia. The paper argues that currently the pattern of IR in Malaysia is rather conflictual than concession accommodating even though Malaysia is already in the advanced level of a semi-industrialised country and might be considered as newly industrialised country (NICs) such as Taiwan, Singapore, and Korea very soon. Regarding labour policies, it strikes that some labour laws that have their origin in colonial and the post-colonial governments are applied up to the present day. This paper is divided into four parts. In the first part the theoretical model of Sharma on the extent of industrialisation and the patterns of IR is presented. Second, the economic development of Malaysia is highlighted briefly. Third, the issues on economic development and IR policies in Malaysia are discussed. Fourth, Malaysian IR policies are examined on the basis of Sharma's model, which was explained in Section One. The paper concludes with the emerging pattern of IR in Malaysia.

Keywords : Industrial relations, Malaysia, conflicting, accommodating, Sharma's model, economic development

Introduction

Before examining Sharma's model as to its application to Malaysian IR, it is important to define IR in the Malaysian context beginning with the local scholars. Aminuddin (2003:2) defines IR as 'the relationship between workers and employers within a work environment', but argues that such a relationship exists only when employees are unionised. Aun (1991:xvii) considers IR as 'the subject which deals with the manner in which the relationship between an employer or groups of employers and employees is carried on, and the methods which they use in their relationship with each other'. Ayadurai (Ayadurai 1998 as cited in Idrus 2001:1) even goes a step further:

IR refers to the relations created by employment between parties who are concerned with employment. Depending on how broadly or narrowly it is defined, it can embrace every aspect, or be confined just to some aspects (perhaps only one) of these relations. Similarly, it can also embrace all the parties who are concerned with employment, or be confined only to the principle one.

Furthermore, Idrus argues that the study of IR as relationship is centred in the workplace between employee, unions, employers' association and the state. This argument is supported by Dunlop (1993), who popularised the 'system approach', with managers, employees - and their respective representatives - and specialised government agencies as the three actors.

Based on the aforementioned definitions, Malaysian IR were criticised by local and foreign scholars in the literature (Bahari 1989; Arudsothy 1990; Arudsothy and Littler 1993; Jomo and Todd 1994; Kuruvilla 1996; Bhopal and Todd 2000; Ramasamy 2000; Todd and Peetz 2001; Ayadurai et al. 2002; Bhopal and Rowley 2002; Suhanah 2002; Mellahi and Wood 2004; Parasuraman 2004; Todd et al. 2004). Those authors argue that Malaysian IR have never been changed since the country's independence in 1957, which is emphasised by the fact that IR and labour laws have not been completely revised and consequently are not applicable in the present economic situation.

More recently Todd et al (2004) argue Malaysian IR need a total reform and that current policies do not correspond with the present economic and k-economy development. Other Malaysian scholars like Arudsothy (1990), Ariffin (1997), Idrus (2001), Suhanah (2002) and Parasuraman (2004) agree with them and criticise the present development of Malaysian IR. They argue that Malaysian IR are neither accommodating nor cooperating as argued by Sharma in his model on the extent of IR and on the patterns of IR. Consequently, the research question of this paper is if, respectively under which conditions, Sharma's model is applicable to the present Malaysian IR scenario.

The structure of the paper is the following. In the first part the theoretical model of Sharma on the extent of industrialisation and the patterns of IR is presented. Subsequently, in

parts two and three, the context of Malaysian IR is discussed. Then, Malaysian IR policies are examined on the basis of Sharma's model. Finally, the paper will conclude with the emerging pattern of IR in Malaysia.

Extent of Industrialisation and Patterns of Industrial Relations: An Augmented Model of Sharma

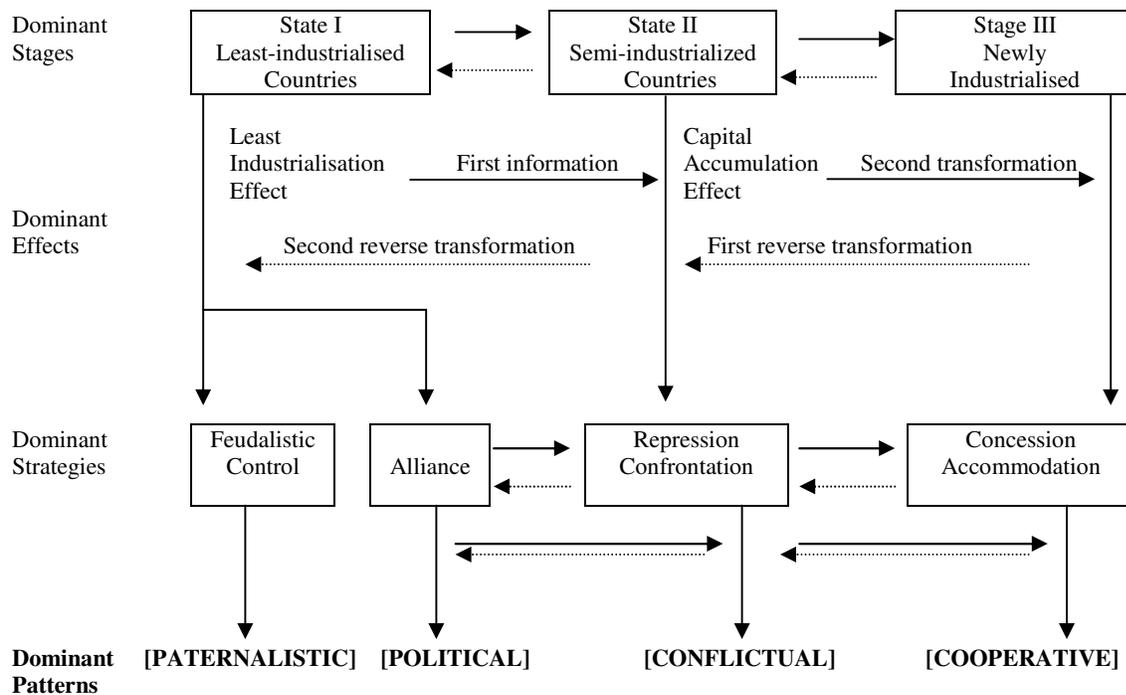
Generally speaking, Sharma (1991) argues that different patterns of IR have emerged at different levels of industrialisation (See Figure 1.1). Thus, he classifies three major stages of industrialisation implying certain patterns of IR: (1) the least-industrialised countries imply a political-paternalistic pattern of IR, (2) the semi-industrialised countries such as Thailand, the Philippines, Malaysia, and Indonesia imply a repressive-confrontative pattern of IR, and (3) the newly industrialised countries (NICs) such as South Korea or Taiwan imply an accommodative-cooptative pattern of IR (Sharma 1996, p.20-23).

In a historical perspective, Sharma (1991) argues that in South Korea and Taiwan in the 1950s, at that time least-industrialised countries, the major aim of the government was not the distribution of income due to the lack of a national capitalist sector as well as lack of growth of national income but the maximisation of political power. Thus, the governments established an alliance with the labour movement resulting in a political pattern of IR. Later, in the 1960s and 1970s, the economies of both countries had progressed into the semi-industrialised stage. Governments were concerned with attracting foreign direct investment in order to enhance capital accumulation and promote exports, but at the same time had to repress wage growth and worker's rights. This in turn resulted in a more conflicting pattern of IR. Subsequently, in the 1980s, South Korea and Taiwan became NICs. The dominant government strategies then changed accordingly meaning that the governments then were willing to make concessions towards trade unions and to seek ways to accommodate the interests of the unions and the employers. In this stage of industrialisation, the dominant pattern of IR strategies is rather flexible, accommodating, and co-operative. In Taiwan under the export oriented industries (EOI) development process, for example, the state encouraged the bipartite IR system between the trade unions and the employers (Wilkinson, 1994b; Lee 1995). This was achieved through the formation of a labour management council at the factory level and the increase of mutual agreements between the union and the employer. This notion of encouragement was a clear step towards a more co-operative pattern of IR.

Coming back to Malaysia, which Sharma (1996) considers as a semi-industrialised country, such as the Philippines, Indonesia, Malaysia and Thailand, a repressive pattern of IR strategies is dominant often leading to a conflictual pattern of IR. In these countries governments try to restrict the workers movement in order to maintain their political power and sustain their economic achievement. Moreover, the state often seeks to persuade unions to abstain from demanding higher wages. In Indonesia, for example, the state uses various kinds of physical violence against unions, particularly against the movement of independent unions (SBSI) (Parasuraman 2004). Since 1997, Malaysia has focus more on knowledge based

economy as a process to achieve NIC status (Todd et al. 2004). However, the pattern of IR is still rather repressive-confrontative than accommodating and cooperative as suggested by Sharma's model. We will discuss this in more detail in the section analysis and discussion (see page 305).

**Figure 1.1 Extent of Industrialisation and Patterns of Industrial Relations:
An Augmented Model**



Source: Adapted from Sharma (1996) *Industrial Relations in ASEAN: A Comparative Study*, p.24

Malaysian Economic Development and Industrialisation Strategy

Malaysia is one of the fastest growing developing countries in Asia. In 2003, the Malaysian labour force was 10.5 million (Malaysia, Department of Statistics 2004) with 60 percent between sixteen and thirty-four years old. By Asian standards, they are well educated: 29 percent have completed 10 years education and 32 percent attained the Malaysian Certificate of Education (MCE) through 12 years of education (Malaysia, Department of Statistics 2004).

Whilst economic development in the advanced industrialised market economies since the 1970s is associated with manufacturing decline, in Malaysia manufacturing has grown faster than beforehand. Since the early 1970s, there has been an extensive structural conversion of the

Malaysian economy as a result of the increasing importance of the manufacturing and service sectors and the decline of traditional sectors such as agriculture and mining (Bhopal and Todd 2000). This transformation has directly affected the composition of the Malaysian labour force. The figures in Table 1.1 demonstrate that total employment in manufacturing and service industries increased from 1990 to 2003.

Table 4.1 Changes in Workforce Distribution by Industry, 1990-2003 (Unit:000 Workers)

	Unit	1990	2000	2001	2002	2003
Labour Force						
Labour Force	'000	7,042	9,573	9,892	10,199	10,515
Labour Force Participation Rates:						
Total (1)	%	64.7	65.7	66.1	66.3	66.9
Male (2)	%	85.6	85.7	86.1	86.3	87.1
Female (3)	%	44.1	44.8	45.0	45.2	45.7
Unemployment	% of labour force	5.1	3.1	3.6	3.5	3.5
Employment						
Total	'000	6,686	9,271	9,533	9,840	10,148
Agriculture	% of total	26.0	15.2	14.8	14.3	13.8
Mining	% of total	0.6	0.4	0.4	0.4	0.4
Manufacturing	% of total	19.9	27.6	26.8	27.2	27.9
Construction	% of total	6.3	8.1	8.1	7.9	7.8
Services	% of total	47.2	48.7	49.9	50.2	50.1

- (1) Total number of people economically active as a percentage of total number in the working age populations of 15 to 64 years
(2) Total number of people economically active as a percentage of total number of males in the working age population
(3) Total number of people economically active as a percentage of total number of females in the working age population

Sources: Economic Planning Unit, Prime Minister's Department, Malaysia and Department of Statistics, 2004.

Before Malaysia became independent, foreign firms controlled agriculture, mining, banking and external trades, while ethnic Chinese and Indians controlled small-scale industries (Rasiah 1995). Ethnic Malays were largely concentrated in the rural agricultural sector. Even though they represented 50 percent of the population, they owned less than 10 percent of the registered business, and less than 1.5 percent of share capital (Kuruvilla and Arudsothy 1995). At the time of independence in 1957, Malaysia's industrial strategy was primarily the processing of raw materials.

From 1957 to 1970, a market-led import substitution industry (ISI) focused on the state's involvement in the development of infrastructure and the rural sectors, while industrialisation was left to the private sector. The first official national industrial policy in the country began in 1958 with the introduction of the Pioneer Industry Ordinance (PIO) (Rasiah 1995). Later, the government created the Malaysian Industrial Development Finance Corporation, which was responsible for providing investment capital and for the development of industrial estates. Additionally, the PIO was the main fiscal tool for the promotion of industrialisation until the introduction of the Investment Incentives Act in 1968 (Rasiah 1994; Rasiah 1995) that was aimed to grant foreign investors tax concessions, to enhance the pioneer status, and to create free trade areas.

The decision to have industrial investments in the private sector was largely a political compromise reached between the parties making up the ruling alliance (Kuruvilla and Arudsothy 1995). The United Malay National Organization (UMNO) became aware that Chinese and Indian acceptance of its political role was to some extent dependent on the state's not interfering in private business and industry beyond its regulatory role. Therefore, the UMNO accepted (temporarily) the Chinese and Indian dominance of business and industry, in exchange for their acceptance of its political domination and their efforts to increase Malay participation in the rural sector as well as in transportation, construction, and timber industries.

The industrialisation strategy (IS) had mixed results. Although by 1969, the Malaysian economy had grown more than 5 percent per year particularly in the manufacturing sector, the increase of ethnic Malays engaged in this economic growth was limited (Kuruvilla and Arudsothy 1995; Kuruvilla 1996). Ownership among Malays still remained between 1.5 and 2 percent while the share among the Chinese and Indians continued to grow. Therefore, it is clearly indicated that the market-led import substitution industry (ISI) approach succeeded in strengthening the economic position of the Chinese and Indians relative to the Malays. In this context, the race riots or communal violence in 1969 can be seen as negative implication of the unbalanced economic system among the races (Lim and Fong 1991; Jomo and Todd 1994). As a result, the National Economy Policy (NEP) was introduced in 1971 under the First Outline Perspective Plan (OPP1) (Suhanah 2002:53). Its aim was to bolster the economic well-being and status of the "*Bumiputera*" (sons of the soil) or, perhaps more accurately, Malay population and other indigenous people. In operational terms, this meant, for instance, an employment quota of 30 percent Malays was prerequisite for companies to qualify for import protection and tax holidays. At the end of NEP in 1990, the Malays' share of corporate wealth should have risen from 2.4 percent to 30 percent.

Later in 1970s the state became a key actor in ISI investment for the first time. State intervention was justified on the ground that Malays had not possessed the wealth or the entrepreneurial ability to start new businesses yet. Therefore, federal investment in the private sector was passed to Malays' hands. As a result of these policies, the Malays' economic involvement in manufacturing employment increased to 32 percent. Malays' involvement in managerial positions also rose to 17 percent while their ownership share increased to 8 percent

(Kuruvilla and Arudsothy 1995). In 1990, however, the OPP1 employment target of 30 percent Malays had not been fulfilled then and most industries still belonged to the Chinese.

Due to the failure of economic participation of Malays, the state's investment in ISI was intensified by the Enactment of the Industrial Co-ordination Act (ICA) of 1975. The ICA restricted the expansion of non-Bumiputera local firms enjoying paid capital exceeding RM\$ 250,000 (Rasiah 1995). Although the government increased control over private sector investment because of implications on the economy in the past, federal investment in business dropped from 14 percent to 3 percent in 1976. This had not only a negative impact on the government, but moreover increased foreign debt from 8.45 percent in 1975 to almost 11 percent in 1976-77.

During the period from 1977 to 1980, the government launched a massive campaign to attract private and foreign investment. Politicians emphasised investment incentives and the development of infrastructure. In electronics and textile industries, for instance, multinational companies (MNCs) manufacturing for export were exempted from the ICA policies on Malays' share ownership and labour laws that might have discouraged their investment. Generally, it were mainly companies from the US and Japan that invested in electronics. Foreign capital inflow was also encouraged during this time to reduce the volume of imports from overseas.

Apart from that, the state also intervened in the development of heavy import-substituted industries, because the Malays owned only 12.4 percent of corporate wealth in 1978 and were supposed to achieve 30 percent by the year 1990. As a result, the government announced the Heavy Industry Policy (HIP) in 1980 that was aimed to improve Malays' economic achievements and to accelerate the industrial growth (Kuruvilla and Arudsothy 1995). Through the Heavy Industries Corporation (HIC), the state then had a leading role in establishing large-scale industrial goods and consumer heavy-duty products for domestic markets as well as a foundation to support a range of private sectors and consumer goods. The HIC invested in a series of large-scale joint ventures, including Proton (Malaysian Small Car Project) as well as iron and steel works in Terengganu. The recession in 1982 and 1985, and the poor performance of the HIP even worsened the situation by causing Malaysian debt mounting to unprecedented levels. By 1987, the HIP had reported losses exceeding US \$100 million and total state liability exceeded US \$2.24 billion (Kuruvilla and Arudsothy 1995).

To recover from the economic problems, the state started to encourage export-oriented industries (EOI). The government simplified the bureaucratic controls, increased investment allowances and incentives, and reduced corporate and development taxes especially in the manufacturing sector. Since 1989, the Malaysian economy has developed fast because of increasing foreign direct investment (FDI) and the growth in exports of manufacturing goods (Gomez and Jomo 1999).

The historical description of Malaysia's economic development leads to the conclusion

that between 1977 and 1988, a shortage of revenue brought about by the government's participation in NEP, ICA and, HIP and consequently increased international debt. These factors saw a shift towards EOI policies. By 1989, the manufacturing sector accounted for 30 percent of the GDP, up from 15 percent in 1970, and 40 percent of export earnings (Kuruvilla and Arudsothy 1995; Kuruvilla and Venkataratnam 1996). Later the industries started to shift towards increased automation and adopted new forms of flexible work organisation. Competition from low-cost producers in other countries, and the need to build forward and backward linkages involving the electronics industries, motivated the state to formally announce a shift from its primary EOI strategy. The new strategy emphasised the attraction of more technology-intensive foreign investment. In addition, the new industrial strategy, revised and articulated in the state's Vision 2020 plan, implied restructuring of investment incentives in order to attract higher technology based capital investment.

Industrial Relations Policies During The Period of Economic and Industrial Development

Kuruvilla and Arudsothy (1995) concluded that under the ISI, Malaysian IR in the private sector was closely controlled by the state. The freedom of unions to organise and bargain was severely restricted. The IR rules and regulations clearly reflected the state's effort to put down industrial conflict in the interest of economic development (Mamman 2002). During the ISI phase, IR in Malaysia reflected the British system (Beresford and Kelly 1993; Ariffin 1997). The main legislation in this period was the Employment Act of 1955, the Trade Union Ordinance of 1959 and the IR Act of 1967. Kuruvilla and Arudsothy (1995) argue that the government was rather restrictive than pluralistic regarding IR. This means that the government believed that the workers needed some degree of fair and humane treatment but at the same time the achievement of the economic development goal was prioritised. The concept of pluralism in industrial relations is meant 'the enterprise contains people with different interests, aims, and aspirations' which can create conflicts of interest (Jackson 1977:21). Gospel and Palmer (1993) argued that conflicts of interest between people at work are inevitable and power will be used in the resolutions of these conflicts.

Although the concept of pluralism was followed by the state, but the union was still constrained by the IR Act of 1967. According to this legislation, trade unions were not allowed to demand better terms of employment than provided by the Employment Act of 1955. In addition, the Registrar of Trade Union (RTU) had far-reaching discretionary powers in recognising unions: the ability to allow registration, to cancel registration if there were two or more unions catering to any sector of the workforce, and to determine the bargaining power. Another tactic used by the state was that even though the unions were allowed to affiliate themselves to apex federations such as the Malaysian Trade Union Congress (MTUC), the Registrar had the power to withhold permission to do so. In general, the principle followed was that permission to affiliate would be granted if the Registrar was convinced that the purpose of affiliation was for relations between workers and not for trade union purpose. Further, there was the prohibition of political strikes and the restriction on the various national labour bodies

such as the MTUC, which were incorporated as societies. Overall, these policies were implemented to ensure that the Malay dominated government had control over the labour movement (Bahari 1989; Arudsothy 1990; Ariffin 1997; Todd et al. 2004).

In addition, the IR Act 1967 restricted the scope of collective bargaining. As abovementioned, unions were not permitted to bargain on managerial prerogative issues. The state also granted certain privileges in order to attract foreign companies. Under the PIO, the state guaranteed, for example, that the terms and conditions negotiated with unions were not more favourably than the provision of the Employment Act of 1955. Strikes were allowed, but were subject to various restrictions such as notice had to be given, a strike ballot had to be taken, and the ballot results had to be registered with the Registrar within seven days. Besides these criteria, strikes were allowed, when the Minister of Labour had referred the dispute for arbitration to the Industrial Court. In terms of dispute settlement, usually both parties, the employer and trade union, would use conciliation as the first method. If conciliation failed to resolve the conflict, then the Minister of Human Resources might refer the matter to the Industrial Court for binding arbitration. The court, in making its award, is required to have regard for the public interest, the financial implication, and the effect of the award on the country, the industry concerned, and also the potential effect on similar industries (Kuruville and Arudsothy 1995; Aminuddin 2003).

The state intervenes in the name of the national economic interest in order to make national conditions favourably for adopting EOI strategies. This is reflected in the changes in IR policies in this phase. Due to dependence on manufacturing for export, the government enacted policies that kept cost low to preserve Malaysia's competitive advantage of cheap and disciplined labour in order to continue to attract FDI (Hadiz 2002). Moreover, the government increased its participation in IR, moving from controlled pluralism to greater state-control. The increase in repression reflected the state's need to increase economic efficiency and productivity of state-owned enterprises and to sustain the EOI strategy.

The first direction of change in IR policy reflected the need to limit costs in the export sector. By 1975, policy change included tax extensions and labour law exemptions for foreign corporations (Rasiah 1995; Kuruville and Venkataratnam 1996). In 1981, for example, the government exempted the INTEL Corporation from the provisions of the Employment Act of 1955 and allowed INTEL to have its employees continuously work for sixteen hours (Kuruville and Arudsothy 1995). In addition, the collective bargaining in this sector was limited to the extent of the terms and conditions of employment under Part XII of the Employment Ordinance of 1955. Furthermore, there was no minimum wage legislation in Malaysia, because the state had always rejected the trade unions' demand.

In 1988, the definition of wages for the calculation of overtime was changed to reduce costs. Previously, wages for overtime included all allowances and bonuses but now it excluded them (Pi'I and Kumaraguru 1989). The rates of overtime pay for working on a day of rest was reduced from triple to twice of the hourly pay, and for working on holidays it was reduced

from 4.5 to 3.5 times hourly pay. Union leaders argued that this change was the result of pressure from electronics manufacturers located in Malaysia, who were concerned about maintaining their competitive cost advantage (Grace 1990).

The government's refusal to enact legislation concerning equal pay for equal work can be seen as another tactics to keep the labour costs low. It seems that the government dealt with this issue particularly concerned with demands from foreign companies especially in electronics (Grace 1990) where the female employees represented 78.6 percent of the workforce. As a result of this refusal and the non-application of the Employment Act 1955, as aforementioned, the female employees could then work also from 10 p.m. to 5 a.m.

The most obvious instance of the RTU exercising arbitrarily its power to prevent unionisation can be found among the workers in the electronics industries (Bahari 1989; Grace 1990; Jomo and Todd 1994; Ramasamy 1994; Ramasamy 2000). After continuous pressure from the International Labour Organization (ILO), the International Metal Workers Federation and the American Federation of Labour–Congress of Industrial Organization (AFL-CIO), the government finally allowed the unionisation of workers in the electronics sectors. However, the Director General (previously RTU) did not allow industry-wide unions, but in-house unions to operate (Wad 1988; Arudsothy 1990; Jomo and Wad 1994; Kuruvilla and Arudsothy 1995). By that, unions were hindered massively from organising themselves. Even though in-house unions were allowed in the electronics sector too, this constituted rather a theoretical right than a real one (Muzaffar 1989; Grace 1990; Jomo and Todd 1994). It did not take too long until this assumption was to be confirmed by overwhelming evidence. In January 1990, workers of a subsidiary of HARRIS Limited won the recognition for their union. Consequently, the company shifted most of its operations and workers to non-union subsidiaries. This example demonstrates the regime shopping abilities of MNCs to their own benefit within Malaysia in order to circumvent strict trade union regulations.

Wage bargaining was decentralised to the enterprise level in the unionised sector (Kuruvilla and Arudsothy 1995). Workplace IR in the export sector were more flexible, and tended to increase joint labour-management consultation (Standing 1993; Kuruvilla and Arudsothy 1995; Kuruvilla and Venkataratnam 1996). Overall under the EOI, the union density has steadily declined in Malaysia to 12 percent and the export-manufacturing sector was increasingly non-union.

The shift from ISI to EOI was the primary catalyst for the tightening of labour relations policies. The government, in response to pressure from foreign companies on which it was so dependent, determined the specific cost containment policies. Ramasamy (2000) also stresses that the legal limitation served as powerful impulse for employers in the manufacturing to adopt anti-labour or union busting tactics affecting union membership in the manufacturing sector. In manufacturing and other industries in the private sector, the unionisation rate is only about 7 percent out of a 8 million workforce in Malaysia (Interview with MEF Executive Director, 24 September 2003). This rate is currently decreasing and will do so in the near

future because of the progress in industrial and economic advancement of economies and with it the natural shift from agriculture to manufacturing and later to the services sector such as telecommunication, health, finance, information technology, and others. The MEF argues that the traditional kind of IR may have to change and a new style of employment relations emerges in the current economic development scenario. Suhanah (2002), however, argues that although Malaysia's industrial strategy has consequently shifted from primary EOI to higher technology-based capital investment, the Malaysian IR and labour law have not significantly shifted towards cooperation over the same period.

Analysis and Discussion

Sharma's model on the industrialisation and the pattern of IR can be seen from the above discussion. Even though Malaysia has almost achieved the NICs status, however the IR system has not reached the accommodative-cooptative pattern until now.

At present, Malaysian IR are highly controlled by the state that does not accept trade unions as an legitimate actor. According to one national union official, currently the state represented by the Department of Trade Union Affairs even make it difficult for trade unions to form a union in the workplace by introducing new rules and regulations (Interview with Metal Industry Employees Union, 6 November 2003). Many issues such as company business and investment plan, mergers and acquisition cannot to be raised in the workplace. In fact, there is no a genuine employee participation in decision-making at the enterprise level. Simultaneously, it seems that employment legislation regarding the workplace, the influence of managerial prerogatives, and the lack of flexible working practices is more favourably to employers than unions or employees (Abdullah 1991; Anantharaman 1997; Ariffin 1997; Ramasamy 2000; Todd et al. 2004).

The government continues to consider unions as troublemakers and rather as an annoyance than a partner in its attempts to accelerate the industrialisation process (Mamman 2002:7). In the past the government even used the Internal Security Act, the military and the police to restrain activities of trade unions (Jomo and Todd 1994 cited in Bhopal and Todd 2000). Actually, this means that unions do not have any opportunity to regain their rights or continue to be active at national and enterprise level in order to protect their members' rights. Besides the government, Bhopal and Todd (2000) report that MNCs from the US, Japan, and Australia operating in Malaysia also consider unions as troublemakers. They found, for instance, that the Malaysian managers in Australian non-unionised companies explicitly proclaimed their hostility towards the union and identified unionists as 'troublemakers' (Bhopal and Todd 2000:202).

With regard to this issue, Todd et al (2004) argue that the achievement of a knowledge-based economy in Malaysia is not paralleled with changes in IR legislation and policies. To support their argument, they use a model demonstrating the link between workplace performance, human resource development policies, and employment relations legislation that

was originally developed by Verma et al (1995:352). One of the components in this model discusses the moment of truth when the country will shift from a developing to a developed country. Then, the employers should give more encouragement to employees and union involvement to participate in the decision-making process, flexible working systems, and enhanced skill development. The government also lessens its control over the unions, gives more room for open collective bargaining, and a flexible wage system. In Malaysia, some employers claim that they are introducing new IR strategies and flexible working systems, which give more say to employees. However, managerial prerogative and management's anti-union position are still predominant in the Malaysian private sector that inhibit the unions or employees from participation in the organisational decision-making process (Rasiah 1995; Ramasamy 2000).

In this context, the President of the MTUC claimed that 'as far as industrial relations matters are concerned in this country, we are not making any progress in the ministry as well as in the company level' (Interview with MTUC President, 21 December 2003). He was expressing union frustration with the Malaysian IR system because the Industrial Relations Department appears to be functioning less effectively in dealing with IR issues if compared to the 1960s, 1970s, or 1980s. Presently, more than 6,000 trade dispute cases are pending in the Industrial Relations Department. The unions are also concerned about the role of the Industrial Court with respect to promoting harmony between the unions and employers in Malaysia, essentially because the Chairman of the Industrial Court appointed by the government usually comes from the employers' side who have an adversarial approach to the unions (Interview with MTUC Official, 21 December 2003). Unions also have argued that the Industrial Court should not be like a criminal court but it should be a court of equity and to be fair to all parties involved.

From the employers' point of view, the major issues are the national competitive advantage as well as maintenance and improvement of companies' profitability (Interview with Malaysian Employers Federation (MEF) Executive Director, 24 September 2003). The MEF Director argued that unions hardly ever come forward to say 'let us make the company more competitive', or keep the company from being closed down. In the Director's view, unions are not worried about companies' business, but rather are concerned about their dues or any payment to be settled by the company. Overall, it comes across quite clearly that the interests of employers and unions in Malaysia are competing interests by nature.

In January 2004, the MTUC sent a memorandum to the Prime Minister appealing to him to examine the labour-management issues in the manufacturing sector. One of their requests is to review the Malaysian IR and labour laws which are outdated in their present version. These laws should be revised by the government and adapted to the current economic conditions and correspond with the current economic development of the country. However, at the moment the revisions of the legislation is not the most urging task, because of massive workplace struggles recently, for instance in context of mergers and acquisitions in the service sector (banking industries), retrenchment in non-unionised and unionised firms, union recognition in

the informal sector, health and safety issues and so forth (Interview with MTUC President, 21 December 2003; Interview with MEF Executive Director, 24 September 2003; Interview with Senior Industrial Relations Officer, Industrial Relations Department, Ministry of Human Resources, 3 June 2004).

Another interesting issue can be seen in in-house unions that have been characterised as being weak by a number of authors. Kuruvilla and Arudsothy (1995:55) argue in-house unions in Malaysia experience restrictions on subjects of union bargaining, and little or no participation in workplace decision-making. Further, Mohamad (as cited in Aminuddin 2003:138) commented that in-house unions were generally weak because membership is limited and confined to workers in one particular company. In addition, he argues that there is a fear of victimisation among union leaders particularly in relation to promotions, termination of employment, transfer, and assignment of duties that are management prerogatives specified in the Industrial Relations Act 1967. Ariffin (1997) argues that solidarity in an in-house union is overwhelmed by the relationship of anti-union sentiments, ethnic awareness, and religious distinction. In the same manner Hadiz (2002) notes that the import of Japanese-style in-house unionism in Malaysia is a new mechanism that obstruct the growth of national-level working class unity and powerful unions. Rasiah also observes that in-house unions in the factory floor did not result in collaborative work relations corresponding with developments in Japan (as cited in Hadiz 2002:256). In his view, the political context in Malaysia apparently worked against such an evolution of collaborative work relations because of no democratisation of labour legislation, the government's maintenance of repressive control over labour and curb disruptions to production in order to sustain competitiveness (Rasiah 2001:95).

In their work, Todd et al (2004) strongly criticised the employee participation practices and implementation process in Malaysian workplaces. In their study they recommend that Malaysia could imitate a model of employee participation, ie work councils (WC), that is common in the European Union (EU) or labour management councils (LMCs) that are common in Korea. They argue that WC/LMCs would not subvert or weaken trade unions' activities, because they might have separate roles at the organizational level. Moreover, they suggest that trade unions could play an important role in collective bargaining and WC/LMCs could act as an alternative channel for employees to have their own voice speaking to the management particularly in non-union firms. By and large, Ng (2002), who discusses labour standards in Asia, agrees with the idea that Asian countries should establish WC as practiced in some EU member states. In addition, he emphasizes that these WS should be legally imposed and by that he supports the Malaysian unions' opinion on this matter. If the present IR laws are revised then this will develop a new paradigm in employee participation practices in Malaysia (Parasuraman 2005).

Conclusion

The major aim of this paper was to examine the applicability of Sharma's model on the extent of industrialisation and patterns of IR to Malaysia. By a historical analysis, we could

demonstrate that Malaysia might achieve developed country status in 2020, regarding its industrialisation stage, but definitely has not overcome the repressive-confrontative pattern of IR strategies yet. The major issues in this context are the following: no major revision of IR legislation since the independence of the country in 1957, more favourably labour law to employers than to unions being reflected in restrictions on the freedom of association and in silent tensions among the workers in the workplace especially in the non-union sector, no social safety net such as retrenchment benefit, no genuine employee participation in the workplace decision-making, ineffectiveness of social dialogue at national tripartite forum, on-going competing interest between the major actors in IR, etc. (Ariffin 1997; Ramasamy 2000; Todd and Peetz 2001; Parasuraman 2004; Todd et al. 2004).

At present, the union and employees do not have any power to influence workplace decisions because of high managerial prerogatives and because of the fact that ‘they had a little influence on most HRM policies’ (Mellahi and Wood 2004:211). The current legislation, introduced and partly unchanged since the 1950s, 1960s and 1970s, is so restrictive that it definitely will not promote genuine workplace democracy. Therefore the union lobbies the government to revise or amend some of the present IR laws.

Chan et al (2003) observe that Malaysia will achieve the status of a developed country by the year 2020 as laid down in the government’s ‘Vision 2020’. Then, Malaysia’s economic strategies will have shifted to higher value-added sectors and more capital-intensive industrialisation will have taken place. Related with this development is the emergence of a ‘new IR’ policy that is characterised by greater employee participation in decision-making, multi-skilled employee working in semi-autonomous teams, and co-operative labour relations (Todd and Peetz (2001:1365-1366). However, it is still a long way to go until Malaysia is seen as a developed country with accommodating and cooperative IR strategies.

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