

LEGISLATION COMMENTS

CREATING A UTOPIAN PARLIAMENT: THE CONSTITUTION OF THE REPUBLIC OF SINGAPORE (AMENDMENT) ACT 1984;¹

THE PARLIAMENTARY ELECTIONS (AMENDMENT) ACT 1984.²

AS long ago as 1982, the Prime Minister had intimated at the People's Action Party annual conference, that the party was studying plans to ensure the presence of intelligent opposition in Parliament. The concept was intriguing, but at that time, still vague. Subsequently,³ the then Defence and Second Health Minister, Mr. Goh Chok Tong, revealed some details of the Government proposals for the creation of an "institutionalized" opposition to augment the "first-past-the-post" regularly-elected candidates to Parliament. When asked why such a proposal was mooted, Mr. Goh said, "we have sensed people want to have a good government, plus a few good people to query the government." This in itself would not have been unusual, except that the government was going to ensure the existence of people to query it! And, of course, the people would have the best of both worlds. Finally, on 24 and 25 July 1984, the Prime Minister, in moving its second reading, outlined the Constitution (Amendment) Bill's main provisions with the reasons for the historic move. The closely-related Parliamentary Elections (Amendment) Bill was outlined by Professor Jayakumar, the Minister for Labour and Second Minister for Law and Home Affairs, on 25 July, on moving its second reading.⁴ It is proposed to consider the effect of both pieces of legislation together.

Non-constituency Members: New Creatures

Genesis

Section 4 of the Constitution (Amendment) Act deleted Article 39 of the Constitution and substituted new clauses. Clause (1) provided for Parliament to consist of such number of elected members as was equal to the number of constituencies prescribed by or under any law made by the Legislature. (Such "law", in this case, is the Parliamentary Elections Act⁵ itself).

Clause (2) provided for:

Such other additional Members, not exceeding 6 in number, who

¹ No. 16 of 1984.

² No. 22 of 1984.

³ *The Straits Times*, 14 May and 21 May, 1984.

⁴ The Constitution (Amendment) Bill was passed on 6 August 1984 and was brought into operation on 10 August 1984, one day before the Parliamentary Elections (Amendment) Bill was passed (11 August), presumably to forestall any arguments that the Parliamentary Elections Act was unconstitutional in regard to the Constitution as it stood before either bill was passed.

⁵ Cap. 50, 1970 (Rev. Ed.).

shall be known as non-constituency Members, as the Legislature may provide in any law relating to Parliamentary elections to ensure the representation in Parliament of a minimum number of Members from a political party or parties not forming the Government.

In tandem with this amendment, section 3 of the Parliamentary Elections (Amendment) Act amended⁶ its parent Act to provide for up to three non-constituency Members to be declared elected, for present purposes.

The Prime Minister stated that the main objective of the amendment was to ensure that there would be a minimum number of opposition members (three) in Parliament even if the PAP won all the constituency seats in a general election. He gave three reasons for the creation of such an institutionalized opposition.⁷ First, it would sharpen the debating skills of the younger Ministers and Members (this reflected his earlier stated view that the newer Members needed "sparring partners"). Second, the existence of opposition Members would educate a younger generation of voters who did not experience the struggles of the 1950s and 1960s as to the limits of what a constitutional opposition could achieve. Third, it would be a means of giving vent to any allegations of misfeasance or corruption or nepotism; and the approach of the opposition Members would dispel suspicions of cover-ups of alleged wrongdoings.

It was clearly the intention of Parliament that only candidates of political parties would be eligible, and not independent candidates, as they would then be able to hold out the promise, if any, of an alternative government. As for precedents, Singapore was in a sense unique; for although one other country, Mauritius, had a similar arrangement to elect eight additional members of Parliament, it required their distribution to reflect the various communities and even defeated candidates of the party in power would benefit from allocation of these seats.⁸ In making the proposal, the Government had considered and rejected as unsuitable, two alternative proposals. One had been for the system of proportional representation, in its many forms.⁹ This was rejected, firstly, because it would encourage parties oriented on racial, linguistic or religious lines; and secondly, because it invariably led to weak government as no clear majority might arise.¹⁰ The other proposal was for a second chamber, and this was not surprisingly rejected as the Rendel Constitutional Commission of 1954¹¹ and the

⁶ This was done by inserting a new section 51A in the parent Act. This provision will be more fully dealt with in a later part of this legislation note.

⁷ Singapore Parliamentary Debates, (1984), Vol. 43, col. 1726 (Tuesday, 24 July 1984).

⁸ *Ibid.*, col. 1838 (Prof. S. Jayakumar).

⁹ The three most popular forms, the "regional-list" system, the "single transferable vote" system, and the "additional member" system, are succinctly explained by David Butler in Ch. 13 of *The Changing Constitution*, (Jowell and Oliver, ed. 1985), pp. 304-308. The oldest form advocated in Britain is the "single transferable vote" system of Thomas Hare and John Stuart Mill.

¹⁰ The Constitutional Commission of 1966 had also earlier rejected the proposal for proportional representation as it would result in racial and communal representation by political parties and perpetuate and accentuate racial differences, making the achievement of homogeneity increasingly difficult. See the *Report of the Constitutional Commission* (1966), Ch. III, para. 48.

¹¹ The majority of the Commission's members, "after the fullest consideration", came to the conclusion that "the case for setting up a second chamber is not established, and that it would be a serious mistake to attempt to create one": *Report of the Constitutional Commission, Singapore* (1954), para. 83.

Wee Chong Jin Constitutional Commission of 1966¹² had each, in turn, advised against it. The Prime Minister concluded that constitutions have to be custom-made and were like old shoes; it was better to stretch and ease an old shoe to make it fit.

Manner of election

Section 3 of the Parliamentary Elections (Amendment) Act inserted a new section 51A in the parent Act outlining in detail the procedure for election of the non-constituency Members. Between one and three such Members would be declared elected according to whether two, one, or no constituency Members, respectively, were elected to the opposition; so that the total number of all opposition Members would be made up to three. Thus, if three or more opposition Members were to be elected in their own right to constituencies, the provisions for non-constituency Members would not come into operation. Such Members would be declared elected in the order of the percentages of votes polled by them in their constituency, the candidate receiving the highest percentage being placed first. A proviso to the section stipulates that a candidate must poll not less than 15% of the total number of votes (other than rejected votes).

Section 3, in inserting a new section 51B in the parent Act, specifies that if a candidate so declared elected fails to take his oath of allegiance before Parliament during its first session after a general election, Parliament may by resolution declare that his seat has become vacant and that it be filled by the next succeeding candidate in order of priority. As subsequent events have proved, however, Parliament is not obliged to keep offering the seat to the next person eligible indefinitely.¹³

Exclusion of voting powers

Article 39(1A) of the Constitution, inserted by section 4 of the Constitution (Amendment) Act, provides that a non-constituency Member shall not vote in Parliament on any motion pertaining to (a) a Bill to amend the Constitution; (b) a Supply Bill or Supplementary Supply Bill; (c) a "Money Bill" as defined in Article 68; and (d) a vote of no confidence in the Government. Otherwise they would have all the rights, privileges and duties of duly-elected Members of Parliament. The Prime Minister merely said that it was "logical and right" that only elected constituency Members should vote on these critical matters.

It is indeed reasonable that only those representing constituencies should have a "mandate" to vote on a no confidence motion; and where a two-thirds majority is involved in relation to constitutional amendments, that only the "representatives" of constituents should vote. It is less clear why the other restrictions should apply when such

¹² See the *Report of the Constitutional Commission* (1966), Ch. HI, para. 49.

¹³ After the December 1984 general elections, Mr. M.P.D. Nair of the Workers' Party, who polled the highest percentage of votes after candidates elected in each constituency, was declared by the Returning Officer as the only non-constituency Member, as two opposition candidates had been elected in their constituencies already. However, on his failing to take up the seat, it was resolved to declare the candidate with the next highest percentage of votes in a constituency, Mr Tan Chee Kien of the Singapore United Front, elected as the non-constituency Member. However, as his party also rejected the seat, it was decided by the Government that no further offers of the seat would be made.

Members can freely vote on all other matters, including other legislation. In any case, a maximum of three Members can hardly bring down a government or obstruct the passage of constitutional amendments! One suspects that this provision reveals the true purpose of non-constituency Members: to be sparring partners only, and to engage in the deadly political combat of debate, but to do little else. This restriction is unfortunate, as the stigma of being a defeated constituency candidate is compounded by the not easily disposable tag of "second-class" Member of Parliament by these restrictions on voting. It may even be suggested that such a Member would be rather more of a "punching-bag" than a sparring partner, as the adversaries would not entirely be on equal terms.

Filling of vacancies and vacating of seats

(1) Constituency Members

Section 5 of the Constitution (Amendment) Act re-enacts as clause (1) of Article 49, the substance of the previous Article 49, and provides for the filling of vacancies caused by reasons other than dissolution, in the seats of Members other than non-constituency Members, by election "in the manner provided by or under any written law relating to Parliamentary elections" in force. Thus, by-elections shall be held under the Parliamentary Elections Act.

Unfortunately, this amendment leaves unresolved any obligation on the part of the Government to call a by-election within any reasonable period. When Singapore was part of Malaysia, Article 33 (later re-numbered Article 49 in the Reprint of the Constitution 1980) of the Constitution of Singapore had provided for the filling of a vacancy "within three months from the date on which it is established that there is a vacancy." These words quoted were expressly deleted by section 7 of the Constitution (Amendment) Act, 1965,¹⁴ on Singapore's departure from the Federation of Malaysia. If in fact a government can choose not to hold a by-election (as in the case of Havelock constituency, following the death of its representative, the well-liked Mr. Hon Sui Sen) for a considerable length of time, this would make Article 49(1) a merely procedural provision.

(2) Non-constituency Members

Section 5 of the Constitution (Amendment) Act, in enacting a new Article 49(2), provides thereby that the Legislature may by law provide for (a) the vacating of a seat of a non-constituency Member in circumstances other than those specified in Article 46; and (b) the filling of vacancies in the seats of such Members where such vacancies are caused otherwise than by dissolution of Parliament.

The first part of the new Article 49(2) is curious, as it does not specify, as Article 46 does, the grounds upon which the seat of a non-constituency Member may be vacated, but leaves it to the Legislature to provide in the future for some grounds, if any. On so important a matter, there should be specific grounds in the Constitution, as there are already for the regular elected constituency Members. To leave

¹⁴ No. 8 of 1965.

it to the Legislature to make provision in the future is to introduce an element of uncertainty for such a member who is left to the mercy of a possibly hostile Parliamentary majority; such a provision is also capable of abuse. One can only trust that an abundance of good faith will prevent untoward provisions being devised to rid Parliament of an unpopular Member.

Prospects

The history of the operation of the new provisions for non-constituency Members has been disappointing. The 1984 general elections saw two opposition Members elected in their constituencies, and this left one seat for a non-constituency Member. Both the candidate declared elected and his successor, on the other's failure to take the oath of allegiance before Parliament, declined their seats under pressure from their own party leaderships. Thus, the provisions, which held much promise, turned out, so far, to be somewhat of a dead letter.

Why, it will naturally be asked, were the offers of a seat turned down? It is submitted that the reasons are two in number. First, the proposal was seen by opposition parties as "a ploy" to discourage the electorate from voting for an opposition candidate on a "first-past-the-post" basis and to vote all the Government party candidates in, knowing that they would get three opposition Members in any case, provided by the good grace of the Government. Second, the restriction on these Members' voting powers made them appear to be "toothless" or "second-class" Members with no one to represent in particular, and the view was expressed that any self-respecting Member would want to have been elected in his own right, by winning in his constituency.¹⁵

So long as the electorate continue to elect some opposition candidates to Parliament in the usual way, there may be little or no need for such non-constituency Members. Nevertheless the concept was novel and its formulation a credit to the Government in its desire to keep pace with a newer generation's aspirations. However, while it remains in our statute books, it may well be a *debutante* in search of its debut.

It is submitted that if the concept is to have appeal at all, another look at it in the light of, perhaps, the "additional member system" of proportional representation, may be preferable. First, it is unsatisfactory to have a "floating membership" in Parliament, as at present, depending on how many opposition Members are elected first-past-the-post, and on how many candidates take up the offer of non-constituency seats. Thus, there can theoretically be any of the following combinations in Parliamentary composition in a future general election:

¹⁵ See the views expressed in Singapore Parliamentary Debates, (1984), Vol. 43, cols. 1744-6 and 1752-7, by the then lone opposition Member for Anson, Mr. J.B. Jeyaretnam. Also see the views expressed in the new Parliament by the two opposition Members elected, Mr. Jeyaretnam and Mr. Chiam See Tong, in *The Straits Times*, 9 March 1985, in a report by Philip Lee entitled "Non-constituency MPs are not second-class: Dhana".

<u>Elected Constituency Members</u>	<u>Non-constituency Members</u>	<u>Total</u>
79	3	82
79 (incl. 1 opposition)	2	81
79 (incl. 2 opposition)	1	80
79 (incl. 3 opposition)	0	79

The above figures would be further confused if one or more eligible candidates (in column 2 above) did not accept their seats as non-constituency Members.

Second, some method of removing the stigma of being in some way inferior to the elected constituency Members should be considered. No doubt, they would not be able to represent a particular constituency, but they should, it is submitted, not be restricted in their Parliamentary functions. Further, there is no reason why the best three of all second-placed candidates should not be declared elected, irrespective of whether they belong to the ruling party, an opposition party or are independents. To this end, a more satisfactory proposal would be to declare 82 candidates elected, including the best three second-placed candidates, and give them all equal standing, except for the right to represent constituents, as far as the second-placed candidates are concerned.

Increasing the Number of Electoral Divisions

Article 39 of the Constitution had provided that Parliament should consist of such number of elected Members as the Legislature might by law provide, and that until other provision was made, the number should be sixty-nine. The Legislature had, before each general election, provided for the increased number of Members by a Parliamentary Membership Act,¹⁶ and Article 39 had itself to be amended on each occasion to specify the current number of Members. This procedure proved, no doubt, cumbersome.

In 1984, a new approach was taken. Section 4 of the Constitution (Amendment) Act provided in a new Article 39(1) of the Constitution that Parliament shall consist of "such number of elected Members as is equal to the number of constituencies prescribed by or under any law made by the Legislature." Section 2 of the Parliamentary Elections (Amendment) Act amended the parent Act by inserting a new section 8(2) as follows: "The number of electoral divisions of Singapore shall be the total number of the electoral divisions specified in the notification made under subsection (I)."¹⁷

¹⁶ Before independence, Singapore had 51 elected Members and the Constitution's Article 23 (Article 39 of the Reprint of the Constitution) had provided for 51 Members. The Parliamentary Membership Act 1967, raised the number of Members to 58. Then, the Parliamentary Membership Act 1971 raised the number to 65. Further, the Parliamentary Membership Act 1976, raised the number to 69. Finally, the Parliamentary Membership Act 1980 raised the number to 75. All these changes required consequential amendments to the Constitution.

¹⁷ Section 4 of the Constitution (Amendment) Act added Article 39(1B), whereby, in Articles 39 and 47, a "constituency" shall be construed as an "electoral division" for the purposes of Parliamentary elections.

The effect of these provisions is that the Minister has only to specify by names and boundaries, the electoral divisions by notification in the Gazette, and no further Acts of Parliament or amendments to any laws will be required. In view of this, the Government withdrew the Parliamentary Membership Bill earlier laid before Parliament, which provided for the increase in the number of elected Members to 79, as "redundant and superfluous."¹⁸

As an incidental amendment, section 2 of the Constitution (Amendment) Act amended Article 5 of the Constitution to delete references to parliamentary membership legislation as the amendments to Article 39(1) and section 8 of the Parliamentary Elections Act obviated the need for such legislation.¹⁹

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¹⁸ Singapore Parliamentary Debates, (1984) Vol. 43, cols. 1833-4, 1846.

¹⁹ *Ibid.*, cols. 1833-4.

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