

BOOK REVIEWS

CONSTITUTIONAL LAW IN MALAYSIA AND SINGAPORE. BY KEVIN TAN, YEO TIONG MIN AND LEE KIAT SENG. [Singapore: Malayan Law Journal Pte Ltd, 1992. li + 826 pp (including index). Softcover: S\$70]

THE book under review jointly written by Mr Kevin Tan Yew Lee, Mr Yeo Tiong Min and Mr Lee Kiat Seng is a unique presentation of the constitutional law of Malaysia and Singapore.

It is a work in a non-traditional style. It takes up a structured topical approach to the study of the two constitutions. It has taken note of the boundaries of history, economics, sociology, politics, and law of these two countries, which render the entire study very useful and interesting. The book has been divided into twenty chapters and four appendices. A separate chapter has been devoted to the rise of constitutionalism and constitutional law. In this respect, the views of eminent writers such as Robert MacIver, Harold Laski, Carl J Friedrich, C Perry Patterson, KC Wheare, Montesquieu and AV Dicey, culled from the original sources have been appropriately discussed. This undoubtedly makes the book richer in contents, but at the same time detracts the reader from the main theme, rendering the entire reading occasionally dragging and monotonous. The authors have provided Notes at the end of the discussion of every important sub-title in a chapter, which are quite useful to the reader.

Chapter II, dealing with the constitutional development of Malaysia and Singapore, contains an elaborate account of the constitutional status of Singapore after separation. Chapter III deals with the position of the written constitution, its supremacy as well as the provisions on constitutional amendment. The authors have made a diluted analysis of the basic features doctrine propounded in *Keshvanand Sharti v State of Kerala*, decided by the Indian Supreme Court in 1973 and rejected it as irrelevant in the context of Malaysia and Singapore. The reason for this rejection was obvious as Article 159(6) of the Constitution of Malaysia and Article 5(3) of the Constitution of Singapore define amendment so as to include "addition and repeal". Hence, there cannot be any constitutional inhibition in substituting an entirely new constitution for the existing one. It has been rightly concluded by the authors that the doctrine of basic features does not have any significance as an implied limitation on the authority of the Malaysian and Singapore Parliaments to amend their respective constitutions.

The authors have prominently delineated the principles of constitutional interpretation, which have especial significance in view of the fact that the Constitution of Malaysia was not drawn from any constituent assembly nor did it have any preamble or directive principles of state policy on the lines of the Indian Constitution.

A graphic account of the Executive and the discretionary powers of the Head of State in the Constitution of Malaysia deserves a special mention. With the passing of the amendments to the Constitution of Singapore in 1991, the office of the President

became an elected one but, until recently, unlike the President of the United States, he was essentially a titular chief executive of the state. The authors have very ably discussed the powers and position of the Executive at length. Further, the structure, composition and powers and privileges of the Parliament of the two countries have been critically presented. It is worth mentioning at this stage that Malaysia adopted a bicameral system whereas Singapore has a unicameral legislature. The discussion of case law on the privileges and immunities of the Legislature is quite informative and revealing.

Chapter VII on the judiciary is very exhaustive, as it contains an elaborate account of judicial power, its meaning, nature, content and scope, and its jurisdiction. The provisions of judicial review in both Constitutions have been discussed in the book. The authors have made meticulous efforts in explaining the term 'judicial misconduct' in the context of the Malaysian judicial crisis of 1988. It was in fact a great event in the history of the Malaysian Constitution to remove the judges of the apex court on the recommendation of an independent tribunal. It is worthwhile to mention that the changed provision of the Constitution for the removal of the judges of the apex court may prove a more effective instrument to check judicial misconduct than the previous provisions in the Constitution or similar provisions in other constitutions in the world. The recent defeat of a motion of impeachment in the House of the People against a judge of the Supreme Court of India is a good pointer to the miserable failure of the existing process of removal of a judge.

Chapter IX deals with the public service in Malaysia and Singapore and their Constitutions like the Constitution of India guarantee special safeguards to public servants in consonance with the principles of natural justice. The relevant provisions are very similar to Articles 309 to 311 of the Indian Constitution. The authors have critically examined the application of the rule of hearing with all its tenets.

Separate chapters on citizenship and the office of the Attorney-General provide interesting readings and proved quite informative. The authors have devoted several chapters to the discussion of fundamental liberties in the two countries. The Malayan Constitutional Commission in 1957 rightly felt that despite the availability of these rights hitherto, there should be constitutional safeguards because of the presence of "vague apprehensions about the future". These rights include the right to life and personal liberty (Arts 5 and 9), the right to property (Art 13 in Malaysia), the right to equality of law (Arts 8 and 12), the right against slavery and forced labour (Arts 6 and 10), the right to freedom of conscience (Arts 10 and 14) and the right to religion (Arts 11 and 15). The right to property was dropped from the Constitution of Singapore because the Government felt that it would impede economic progress. Most of the liberties are qualified except the freedom from slavery in Article 6(1) and Article 10(1) of the Malaysian and Singapore Constitutions respectively.

Chapter XIV deals in great detail with the wide discretionary powers of the Legislature as well as the Executive to deal with subversion and emergencies, in derogation of fundamental liberties of the person. The most conspicuous exercise of the power is in the area of detention without trial. The discussion on the judicial review of executive detention with the help of decided cases and the jurisprudence of subjective satisfaction of the Executive is conspicuous. The authors have elaborately examined the most significant decision given by the Federal Court of Malaysia in *Karam Singh v Menteri Hal Ehwal dlm Negeri, Malaysia* [1969] 2 MLJ 129. A reference to several Indian cases on the point, eg *Ram Munhar v State of Bihar* AIR 1966 SC 740, *Jagannath Misra v State of Orissa* AIR 1966 SC 1140 and *Sadanandan v State of Kerala* AIR 1966 SC 1925, has made the entire chapter very interesting, instructive and useful. In this respect, it has been very rightly pointed out that the law in Malaysia is different from that in India. In Malaysia the power

of detention is entrusted to the highest authority in the land acting on the advice of the Minister, responsible to and accountable in Parliament. In India it is entrusted to comparatively minor officials. Strict compliance with procedure is therefore necessary. In contrast to the provisions of Article 21 of the Constitution of India, clause (1) of Article 5 of the Malaysian Constitution provides simply that no person shall be deprived of his personal liberty save in accordance with law without any mention of procedure. All the aspects of executive detention have been ably discussed by the authors. The authors have made an in depth study of the relevant provisions with the help of case law. They have also critically examined relevant provisions of the Constitution of Singapore on this matter. They have made every effort to describe the up-dated Constitutional Amendments and other relevant laws, *eg*, the Internal Security (Amendment) Act 1989.

The authors have made a comparative study of the right of equality and equal protection of law with other constitutions and have critically examined the problem of classification, the issues relating to equality in criminal prosecutions and the positive discriminations under the Constitution.

The chapters on Freedom of Speech, Assembly and Association and on the Right to Property under the Constitution of Malaysia and on the Freedom of Religion have been well discussed. These rights and freedoms are not absolute nor could they be so in any democratic system. Reasonable restrictions have to be imposed upon their exercise for the sake of security of the country, maintenance of law and order, preserving the public morality and upholding the dignity of the courts. The authors have meticulously examined the diverse aspects of the freedom of religion as provided for and practised in both the countries and have also included a reference to the Maintenance of Religious Harmony Act 1990 of Singapore which regulates religious harmony by creating a Presidential Council for religious harmony and prohibits certain forms of conduct.

The authors have also given four appendices at the end of the book. Appendix A relates to the Report of the Federation of Malaya Constitutional Commission 1956-1957. Appendix B relates to the Federation of Malaya Constitutional Proposal 1957. Appendix C relates to the Report of the Constitutional Commission Singapore 1954 and Appendix D relates to the Report of the Constitutional Commission 1966. These appendices have made the study of the two constitutions not only interesting but also instructive for tracing the historical evolution of the present Constitutions of Malaysia and Singapore. The authors deserve to be complimented for producing a comprehensive work on the two multi-racial, multi-lingual and multi-religious democratic systems of the world. The printing and get up of the book is impressive.

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