

## BOOK REVIEWS

THE CONSTITUTION OF MALAYSIA. By L. A. Sheridan and Harry E. Groves. [New York: Oceana Publications, Inc. 1967].

This joint venture by two former deans of the Faculty of Law, University of Singapore, Professor L.A. Sheridan and Professor Harry E. Groves, writing from two different parts of the world, the former from Belfast, Northern Ireland and the latter from Ohio, United States, is jointly to chronicle the changes of the Constitution of Malaysia.<sup>1</sup> As pointed out in the Preface of this book, Professor Sheridan had earlier pioneered this task in the 'Federation of Malaya Constitution,'<sup>2</sup> and the present book under review is intended to be the second edition of this earlier book.

This book is divided into seventeen chapters, each dealing with the different parts of the Constitution. Each chapter is preceded by a very short paragraph of general comment, followed by the relevant text of the Federal Constitution. A brief commentary then follows these provisions of the Constitution.

The first thing that strikes a reader is the paucity of comments made under each of the Commentaries. In fact, the major part of the book itself is made up of the text of the Federal Constitution. The authors have not discussed the relevant articles in sufficient depth nor have they made references to comparative materials and cases. It would therefore seem that a book of this nature would have very little use to a local practitioner or a student of Constitutional Law in Malaysia or Singapore.

The Federation of Malaysia was formed in 1963<sup>3</sup> and there have not been very many opportunities for the courts to interpret the articles of the Constitution. For a better understanding of the relevant provisions of the Federal Constitution, it is then necessary to make reference to decisions from other countries which have similar provisions in order that one may be able to understand the scope of each of the provisions of our Constitution.

Article 5(1) of the Federal Constitution provides:

'No person shall be deprived of his life or personal liberty *save in accordance with law.*'<sup>4</sup>

The meaning of the words in italics has not been interpreted by the Malaysian courts as yet, and the exact scope of such a provision is not clear. It would therefore be interesting to see how these provisions have been interpreted by other courts in other countries and to find out whether any such interpretation would find favour with our courts. Would the notion of 'due process' as embodied in the Constitution of United States be incorporated into Art. 5(1) or would the local courts favour the interpretation given by the Indian Supreme Court in *Gopalan v. States of Madras*<sup>5</sup> and the Burmese Court in *Tinsa Maw Naing v.*

1. See Preface, p. (iii).
2. Published in 1961 by University of Malaya Law Review in association with Oceana Publications, Inc.
3. September 9th, 1963.
4. Italics supplied.
5. A.I.R. 1950 S.C. 27.

*Commissioner of Police*.<sup>6</sup> Both these courts have interpreted a similar provision<sup>7</sup> to mean that life and personal liberty can only be deprived of by a law enacted by a competent legislative body. These courts have also rejected the argument that the 'due process' clause should be incorporated into this provision. The authors in commenting on Art. 5(1) make no reference to any of these cases but authoritatively point out, 'clause 1 of Art. 5 does not import the nature of due process, it merely makes the acts described unconstitutional if done unlawfully.'<sup>8</sup> Such a proposition would not be very useful to a lawyer or student in the absence of any authorities in support of it. A comparative study together with the relevant authorities is necessary.

Article 43(4) of the Federal Constitution has recently given rise to several difficulties. It is not clear what the position is when the Prime Minister ceases to command the confidence of the House of Representatives. Article 43(4) reads:

"... unless at his (Prime Minister) request the Yang di-Pertuan Agong dissolves Parliament, the Prime Minister shall tender the resignation to the Cabinet."

Does this provision mean that the Prime Minister has the choice of either asking for a dissolution of Parliament or handing in his resignation to the Cabinet? What would be the position if the Prime Minister refused to do either, Can the Yang di-Pertuan Agong dismiss the Prime Minister? What if the Prime Minister chose to ask the Yang di-Pertuan Agong to dissolve Parliament but the Yang di-Pertuan Agong refused. Would there then be a constitutional impasse?

Harley J. in *Stephen Kalong Ningkan v. Tun Abang Haji Openg*<sup>9</sup> raised the problem *inter alia* of the position when the Chief Minister of Sarawak,<sup>10</sup> seeks a dissolution but the Governor refuses to comply. It was held that even in such a circumstance, the Governor had no power to dismiss the Chief Minister. This holding by Harley J. has led writers<sup>11</sup> to hold that in such a circumstance then there would be a constitutional impasse. However, it is submitted that on a closer reading of Art. 7(1), it would seem that the Chief Minister does not have a choice as to whether to resign or not, though he may have a choice as to the manner of terminating his term of office. He may either ask the Governor to dissolve Council Negri or hand in his resignation. If he chooses the former, but the Governor exercising his discretion under Article 10(2)<sup>12</sup> refuses to dissolve Council Negri, then according to Article 7(1) the Chief Minister has no alternative but to resign. Article 7(1) provides:

"unless the Governor dissolves Council Negri, the Chief Minister shall<sup>13</sup> tender his resignation."

Thus it would seem similarly that if the Yang di-Pertuan Agong refuses to dissolve Parliament, the Prime Minister under Art. 43(4) is bound to tender his resignation.

The authors make no comments on any of these problems but merely make a passing remark in the Preface to *Ningkan's Case* — the only case to have arisen locally concerning Art. 43(4). The authors say, "... the judgment has significance as to the probable interpretation of parts of the Federal Constitution, such as Article 43(4)." It would seem from this statement that the authors have over-

6. 1950 Burma Law Reports 17.

7. Article 21 of the Indian Constitution reads as follows: "No person shall be deprived of his life or personal liberty except according to procedure established by law." Section 16 of the Burmese Constitution reads: "No citizen shall be deprived of his personal liberty... save in accordance with law.

8. Page 34.

9. [1966] 2 M.L.J. 187.

10. Article 7 of the Sarawak Constitution is similar to Art. 43(4) of the Federal Constitution.

11. e.g. see S.M. Thio, "Dismissal of Chief Ministers" (1966) 8 Mal. L.R. p.283.

12. Art. 10(2) of Sarawak Constitution is similar to Art. 40(2) of Federal Constitution.

13. Italics supplied.

looked the importance of this case and the problems raised under Art. 43(4). It is submitted that the authors should have dealt with this case in greater detail either in the Preface or they should have added an Appendix to this book.

The other striking feature of the book is the inclusion of the provisions relating to Singapore within the Malaysian Constitution. Since the book is entitled 'Constitution of Malaysia', strictly speaking then, the provisions relating to Singapore should not have been included.<sup>14</sup> Singapore ceased to be a part of the Federation on August 9th, 1965, and since then Malaysia has been a Federation of the former eleven states of the Federation of Malaya together with Sabah and Sarawak. Though the authors point out that 'constitutional changes being incessant, any book on constitutional law is bound to be out of date by the time it is published,' yet it can be seen that the book was already out of date *before*<sup>15</sup> it was even published.

Had the authors not merely reproduced the text of the Federal Constitution as published by the Government Printers in 1964<sup>16</sup> but published the text after the relevant alterations had been made by removing the obsolete provisions relating to Singapore, this book would then have been very much more relevant, as it would have been the only book containing the up to date provisions of the Federal Constitution.

Among the other comments relating to the book is one concerning the footnotes. This edition, unlike the first has all the footnotes printed together at the back of the book. It might have been more economical, but it causes a great deal of inconvenience and a waste of time for the reader who has to keep turning to the back of the book each time he has to refer to a particular footnote. In chapter five, for example, one has to turn to the back of the book a hundred and fifty-one times to refer to the footnotes mentioned.

In conclusion, it may be said that in spite of these drawbacks the book is not without use. It provides a general scope of the Federal Constitution to a reader, particularly the foreigner, who is interested in knowing the nature of the Federation. The Bibliography together with the Table of Cases and the Statutes gives a comprehensive covering of most of local materials on constitutional law in Malaysia and Singapore.

14. The authors, however, have italicised those provisions relating to Singapore which is now spent.
15. “The law as shown in this edition is as it stood on 31st August 1966.” See Preface.
16. Federal Constitution compiled in the Attorney-General’s Chambers, Kuala Lumpur.