JUDICIAL REVIEW OF REASONABLENESS IN CONSTITUTIONAL LAW. By T.K.K. IYER. [Madras: Madras Law Journal Office. 1979. xiii + 294 pp.]

The easy conquest of the Weimar constitution and the horror of National Socialism reawakened the post-war world to the importance of constitutional protection of individual freedom against State power. Thus an ubiquitous feature of post war constitutions is a bill of rights, varying in scope and enforceability. However, even at that stage, it was obvious that the dynamics of development would thrust these rights in direct conflict with the larger interests of society, represented by the State. These constitutions therefore conferred on the legislature the power to circumscribe these rights in specified circumstances.

Many constitutions — including those of India, Singapore and Malaysia — provided for judicial review of the constitutionality of such circumscription.

The restrictions on individual freedom would be legal if the judiciary finds these "reasonable". What is the meaning of "reasonable"? How do courts evaluate the "reasonableness" of restraints on freedom? These are the themes of Dr. T.K, Krishnamurthy Iyer's book, 'Judicial Review of Reasonableness in Constitutional Law'.

Dr. Iyer's book is the first attempt to study Indian judicial attitudes to the reasonableness of legislative limitations on liberty. Of all the courts in the developing world, Indian courts were called upon most often to exercise this power of judicial review. The Indian experience is therefore of considerable interest for countries like Singapore and Malaysia where judicial review is feasible.

The author takes us back to the exciting debates in the Indian constituent assembly on this question. He examines the significance of the ultimate choice of the concept of "reasonableness" as the test of the legality of legislative restraints on freedom, in preference to the American idea of "due process". He rejects the suggestion that this choice indicated that the founding fathers of the constitution intended that the scope of judicial review in India should be narrower than in the United States.

The book explores the general meaning of "reasonableness" in English law. The (deliberate?) inability of the law to define this "vague and ugly" phrase (as the British War Policy Committee called it) is eloquently portrayed by the little anecdote that Dr. Iyer reproduces from Raphael Powell's "The Unreasonableness of the Reasonable Man" (1957) 10 Current Legal Problems, 104, 107:

> "Master Diamond and I were about to cross a busy road when I remarked: 'we must now use the care of a reasonable man'. He said: 'he doesn't exist, does he?' I replied: 'I doubt it'. But we still crossed the road safely."

The vagueness of the notion is compounded by the fact that the exercise of judicial discretion is itself a "value-ridden, policy making" exercise. Thus there is a certain "ideological content" in reasonableness as determined by the courts.

About a 1000 decisions drawn from India, the U.S. and the U.K. are painstakingly reviewed. Restrictions placed on almost every aspect of freedom are closely examined. Thus laws that affect the freedoms of speech, expression, assembly, association, trade, business, the professions, morality and property; laws on sedition, obscenity, cinema censorship, economic and industrial regulation, monopoly, licensing and the press are all closely examined. The judicial determination of the reasonableness of these restrictions is then closely and critically evaluated. From this evaluation emerge the various judicial attitudes to reasonableness of legislative restrictions of freedom.

The book is sympathetic to the judges and Dr. Iyer seems to be of the opinion that they have, on the whole, determined reasonableness

without personal prejudice, always observing "methodical impartiality". They have seen themselves more as technicians of the law than as social reformers. The author argues that this is the proper approach as the task of reform is best left to the legislature. Legislative inaction cannot be compensated by judicial activism. One of the premises of the writer seems to be that judicial review is a good institution, a safe bulwark against any attempt by the legislature to take away the freedoms conferred by the constitution.

There will be those who may disagree with Dr. Iyer's opinion and argue that in this very neutrality — and indifference to socio-political questions — the judiciary has, in fact, adopted a clearly political posture. It may also be argued that judicial review is a method by which a small socio-economic elite continues to sit in judgement over the *vox populi* and is therefore to be narrowly limited to the most blatant abuses of constitutional prerogative.

Fascinating questions and issues regarding the concepts of reasonableness and impartiality are posed in the book. Dr. Iyer, however, stops short of developing a theory of reasonableness of limitations on liberty, ultilising the rich empirical data he has collected from the U.S., India and the U.K. He critically evaluates the judicial determination of reasonableness in each instance, but does not carry the analysis to its logical conclusion by presenting an integral statement on the judicial concepts of reasonableness and impartiality.

In the early part of the book, the author searches for an explanation for the word "reasonable" and suggests that "it is, perhaps, the principle that stands for harmony". The study of an impressive mass of cases reviewing reasonableness does seem to implicitly suggest that the courts have looked at the harmony idea seriously and that they have usually balanced the respective needs of "freedom and social control".

Dr. Iyer could also perhaps have discussed, in addition, the political role of the Indian judiciary, based upon his careful analysis of scores of cases.

After completion of the manuscript, the Supreme Court of India has spoken a great deal on the subject matter of the book. The decisions in *Keshavananda Bharathi* (specially, the speech delivered by Justice Mathew), *A.DM. Jabalpur* v. *Shivkant Shukla* (the Habeas Corpus case), *Sankalchand, Maneka Gandhi* v. *Union* and *Sunil Batra* v. *Delhi Admin,* should provide the author with rich material for a second edition.

As an unparalelled study of the vital process of judicial determination of the constitutionality of laws that are often of momentous socio-economic significance, this book is a valuable and necessary addition to the library of all students of commonwealth constitutional law.

In a sense, this is a book on freedom, what one may call 'net freedom' (freedom minus limitations). We obtain from its narrative an invaluable insight into freedom as it is operative, rather than as it is described on the glossy pages of the Indian constitution.

One of the most commendable attributes of the work, other than its depth and thoroughness, is its lucid and highly readable style. An occasional flash of humour brings to life what, in lesser hands, could have been a somnolent dissertation.

M. GOPAL