

REFLECTIONS ON THE CONSTITUTION AND THE CONSTITUENT ASSEMBLY. By L.J.M. Cooray. Hansa Publishers Private Limited, Colombo. 1971. xvi+130. Rs. 25.

THIS BOOK by Mr. Cooray is small but interesting enough from the point of view of constitutional jurisprudence. The author rightly emphasises the close political connection between U.K. and Ceylon and also traces the constitutional history of his country, from stage to stage and from time to time. It is in view of the past historical association and the imminent development which may take place in near future that he has analysed the whole context of the evolution and offered certain valuable suggestions. The content of this book is essentially based upon the class-lectures of the author, addressed to the law students of the Colombo University. In this sense, the book is immensely suitable and useful to the students, as the discussion has all along been precise, but at the same time penetrating. But it is no less interesting even to the legislators and the constitutional experts, as some fundamental questions have been raised and discussed from various angles, with reference to the different views of the different authorities, including decided cases. As a matter of fact, this method of treatment has greatly enhanced the value of the book.

The book consists of eight chapters. The first chapter deals with the nature of constitutional law—its definition, classification and sources including statutes, precedents, customs, expert opinions along with the contributions of the British and Roman-Dutch law. In the second chapter, the constitutional history of Ceylon has been traced and analysed closely from 1796—when Ceylon was conquered by the British—up to the Ceylon Independence Act 1947, culminating in the independence of the country, passing through various phases of developments, providing for progressive control and autonomy. The Ceylon Independence Act was passed in 1947, by the British Parliament. The author has also examined whether this Act can be changed and concludes by saying that it can neither be changed by the British Parliament nor by the Ceylon Parliament. This point will be further discussed while discussing the last chapter of the book which practically constitutes the most important topic. In the third chapter, the author discusses the various aspects of one of the most important constitutional safeguards, namely, rule of law—starting with the original exposition of the term and also the contribution of Dicey to this important concept. He concludes this chapter laying emphasis on the rule of law, though at the same time, he feels that ‘in Ceylon, as in many other countries, many politically conscious people seem to owe a greater loyalty to a political party than to the rule of law’. Chapter IV deals with conventions which occupy an important position in Ceylon, on account of its close contact with the British Parliament, though there is a lot of difference between the two

constitutions—one being written and the other being unwritten. Chapter V deals with the supremacy of Parliament and a comparison between Parliament of the U.K. and Ceylon. The Ceylon Independence Act, 1947, confers on the British Parliament power to legislate for Ceylon, but only with its consent. But if it is conceded that the British Parliament cannot bind itself, it can as well repeal the Ceylon Independence Act, 1947. According to several decided cases, the Ceylon Parliament has the full legislative power of a sovereign independent state. A different view was, of course, held by Jennings and Amerasinghe. Delegated legislation also has been discussed in detail with its various classifications, limitations and utilities. Independence of the judiciary has been discussed by the author in chapter VI. The judiciary is not absolutely independent in the sense that the executive has got certain indirect control in the form of appointment, salary, retirement, *etc.* Though as a matter of fact, fortunately, Ceylon has got a Supreme Court with traditional independence, appointment of politically committed judiciary is not totally ruled out, according to the strict interpretation of the constitutional provisions. Chapter VII deals with the usual features of separation of powers in a modern state. The author very pertinently refers to the various views and their criticism and concludes by saying that strict separation of powers particularly between the executive and the legislature is neither desirable nor possible.

The last chapter of the book is, in a sense, the most important chapter, as herein, the author deals with the prevailing law, the purpose and function of the Constituent Assembly and the proposed new Constitution for Ceylon. He does not, of course, say anything in particular about any concrete provisions of the proposed Constitution, nevertheless, he makes certain suggestions and observations, after a critical examination of identical situations in various countries, such as, Ghana, India, Pakistan, the U.K., and the United States, *etc.* It is true, according to him, that in a given situation, different countries have reacted on more or less different lines. But the author makes certain general observations—quite competently and confidently in the context of Ceylon.

As it has already been observed, the author bases his conclusions on the classification of constitutional reforms, as legal and extra-legal. The extra-legal method means revolution or a revolutionary change. The Constituent Assembly of Sri Lanka was not set up by the House of Representatives by any resolution or by the Parliament by any Act. It was convened by the Prime Minister. This revolutionary method had to be adopted, in as much as, the reform of the Constitution was not permissible within the existing legal frame-work. It was to be seen that the Constitution of the sovereign Republic of Sri Lanka should derive its authority from the people of the country and the local legal resources, rather than from the order of council and the Act of British Parliament. This has been otherwise described as autochthony. The deliberations of such a Constituent Assembly are to indicate a revolutionary process and

the approach can by no means be strictly legal. The validity of such a Constitution, on the last analysis, does not depend on law, but is based on an 'ultimate legal principle' or 'a fundamental postulate of a legal system'. This is also supported by the view of Jennings when he says that revolutions, if successful, always make new law and also that all revolutions are legal when they are successful.

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