

LAW, POLITICS AND GOVERNMENT IN THE PACIFIC ISLAND STATES (1988). Edited by Yash Ghai. Institute of Pacific Studies, University of the South Pacific. P. 372.

THE PACIFIC Island States which have attained Independence over a span of thirty years (1960-1987) offer rich and interesting models in constitution making. Their constitutional and governmental systems provide us with certain fascinating features which deserve to be known outside these small islands. The book under review¹ is a collection of essays by well-known scholars, dealing with various aspects of constitution making, constitutional development and constitutional patterns in these islands.

I Contents and structure

The countries dealt with, are mostly small in area or population. The most populous country is Papua New Guinea (3.5 millions), while the least populous is Niue (2,500). The countries are scattered throughout the Pacific, and most of the countries are themselves made up of islands spread over a wide geographical area. But each of them has undergone the trials and travails of Constitution making. There has been considerable borrowing from other Constitutions. There have been adaptations. There have been innovations; and there has been consolidation also. All these familiar devices of law making present themselves in these studies, amidst the romantic surroundings of the Pacific.

The contributors are - Peter Baynic, Alan B. Burdick, Sir Julius Chen, T.L. Davey, Tony Deklin, Yash Ghai (who is also the editor), J.W. Kamukamica, Peter Larmour, C.J. Lynch, Lake M. Niu, Guy Powles, Utula Samana and Neroni Slade. Yash Ghai has contributed the largest number of articles (4), and has also undertaken the onerous task of editing the various contributions. The result has been a very satisfying book which offers highly interesting insights, not only in the sphere of comparative constitutional and administrative law, but also in the sphere of legal system and law making. There is also an extremely useful contribution by C.J. Lynch on styles in the drafting of some Pacific Constitutions.

Part I of the book (comprising nine contributions) deals with general topics, such as Constitution-making, judicial review, public service law, land tenures, land policy and styles in drafting. These contributions discuss the position as prevailing in all the Pacific Island States (or most of them). Part II of the book (comprising six contributions) deals with the constitutional and legal experience of particular countries (Papua New Guinea, Federated States of Micronesia, Fiji

1. Yash Ghai (ed.), *Law, Politics and Government in the Pacific Island States* (1988).

and Tongo). Part III of the book comprises Yash Ghai's contribution on the political consequences of the Constitutions.

II Process of Constitution-making

The material offered here covers both the process of Constitution-making and the final product. The process presents a variety of techniques - constitutional conventions, commissions, committees and so on, as also formal or informal consultation with the people. There are interesting tit bits, scattered throughout the book, which make the contributions highly readable. The country where there was the widest consultation with the people in Constitution-making was Papua New Guinea. As Julius Chen (for some time Prime Minister of that country) tells us in his contribution, titled "Experience with Papua New Guinea's Constitution", the Constitution of Papua New Guinea came to birth after a long and thorough process of discussion amongst people from all walks of life and from every region in the country.

Two countries - Western Samoa and Niue - had to resort to a referendum on their Constitutions. In some countries, particularly in those which were previously US Trust Territories (*e.g.*, Federated States of Micronesia), constitutional conventions had professional staff (Normal Meller, Alison Quentin-Baxter, Lawrence Tribe). The Micronesian Convention was held in the sessions totalling 90 days between July and November, 1975, as stated by Alan Burdick who has contributed the paper "The Constitution of the Federated States of Micronesia". Convention delegates were authorised to submit their own proposals and 163 such proposals were submitted but only 4 were reported out of committee.

III Purposes of Constitution

The Constitutions of these Island States have three main purposes; *first*, to create the institutions of government and to define their compositions and powers; *second*, to provide a philosophy or statement of principles to be followed by these institutions; and *third* to set limits to the powers of these institutions, being limits whose primary object is the protection of the individual.

IV Types of executive

Some features of the products that have resulted from the process of Constitution-making in the Pacific Island States deserve to be noticed. Thus, the major basic types of executive that have been created in the Pacific are two - the Presidential and the Parliamentary. The Presidential type of executive is adopted in the Federated States of Micronesia and in Belau, where the executive power is vested in an elected President who is separate from the legislature. In the rest of the states, the Parliamentary form of executive has been adopted. In Tonga, however, the Constitution provides for the monarchical form and in some countries (*e.g.*, Papua New Guinea Solomon Island, *etc.*), the British Queen is

the formal head of the state, though she is called the Queen of the country concerned. This is not to say that the countries that have adopted either the Presidential or the Parliamentary form of government have totally formed the American model or the British model (as the case may be) in every detail. On some points, there have been modifications and variations or refinements. Thus, in Papua New Guinea, by section 88(5) of the Constitution, it is provided that the Governor General is appointed by the Queen on the nomination of Parliament and he can be removed at its request. In Tuvalu, he is appointed on the advice of the Prime Minister, after confidential consultation with Parliament.²

Where the Parliamentary form of executive has been adopted, the Constitution in most cases, vests executive power in the head of the state, but it is also provided that he must act on the advice of the Cabinet in the discharge of his functions. (Fiji, Papua New Guinea, Solomon Islands, Tuvalu and Western Samoa). But this is not invariably the position. For *e.g.*, in Cook Island, there is no provision in the Constitution that the Queen's representative shall act on the advice of the Cabinet, though the Constitution by section 13 does provide that the Cabinet shall have the general direction and control of the executive government.

Incidentally, in Vanuatu, the executive authority is by the Constitution, directly vested in the Prime Minister and the Cabinet - a provision of an exceptional character.

V Position of head of state

In certain cases, the head of the state is expressly authorised to act in his discretion in certain matters. Examples are -

- (a) Fiji (appointment and dismissal of the government and dissolution of Parliament).
- (b) Vanuatu (assent to legislation).
- (c) Western Samoa (dissolution of the legislature and proclamation of emergency).

The Papua New Guinea Constitution, in section 86(1), provides that the only powers of the head of the state are those specified in the Constitution. Thus, reserve powers or prerogatives are totally eliminated.

VI Dissolution of Parliament

The problem of dissolution of Parliament, after the government loses its majority in the House, is one which raises its head in most countries which follow the Westminster model. The Pacific Island States were conscious of the likelihood of such a problem and seem to have made attempts to deal with it, by

2. See, s. 55, Constitution of Tuvalu.

introducing some specific provisions on the subject in their constitutions. There is a bewildering variety of solutions adopted in this regard. In this review, only few can be referred to. Thus, in Kiribati, the only situation in which early dissolution can take place is on the passing of a vote of no confidence.

VII Independence of judiciary

The independence of the judiciary is also a topic that has received attention in the Constitution of the Pacific Island States. Two Constitutions³ declare that judges shall be independent. Some Constitutions require that judges other than the Chief Justice may be appointed on the advice of the Judicial Service Commission. In Fiji, by section 85(7), it is provided that the Director of Public Prosecutions "shall not be subject to the direction or control of any other person or authority". In some Constitutions, provision is made for the appointment of non-citizen judges for short periods.

VIII Judicial review : a case of search and seizure

The doctrine of judicial review, which requires the courts to determine whether state action is in conformity with the Constitution and the law, also figures in the constitutional law of these countries. The decision of the Supreme Court of the Federated States of Micronesia in *Federated States of Micronesia v. Tipen*,⁴ affords a very interesting illustration of judicial review. The action involved was the search and seizure by the police of a bag belonging to Tipen. The incident occurred in a bar without a search warrant from a judicial officer authorising such search. The police had arrested Tipen and searched his bag. The prosecution sought to tender the evidence obtained by search of the bag. The Supreme Court upheld the objection of the accused that, in the circumstances, the seizure and search violated article IV, section 5 of the Constitution of the Federated States of Micronesia, which reads as under :

The right of the people to be secure in their persons, papers and other possessions against unreasonable search, seizure or invasion of privacy may not be violated.

The court further held that evidence obtained by the illegal seizure could not be admitted in the criminal prosecution against Tipen. For this particular conclusion, however, the court did not find it necessary to rely on the constitutional provision. In its view, on a proper construction of the relevant statute, evidence obtained illegally was not admissible in a court of law.

Incidentally, in holding that the search in question was "unreasonable", Chief Justice King of the Supreme Court of the Federated States of Micronesia referred extensively to American decisions on the subject and expressly justified

3. See, art. IV, s.1, Marshall Islands and s. 157, Papua New Guinea.

4. Crime case no. 1981-516 (25 Feb. 1982).

a reference to, and reliance on, American decisions by pointing out that in developing the Declaration of Rights for the Constitution of Micronesia, the framers had been drawing most extensively upon United States law. Hence, in interpreting the Declaration of Rights, "We should emphasise and carefully consider United States Supreme Court interpretation of comparable language in the Bill of Rights in the United States Constitution."

All in all, the book offers highly stimulating material of great value to everyone interested in comparative constitutional law.

*P.M. Bakshi**

* Director, Indian Law Institute, Member, Law Commission of India, New Delhi..

BOOKS RECEIVED FOR REVIEW

ANOOP K. KAUSHAL, *Universal's Practical Guide to Consumer Protection Law* (1993). Universal Book Traders, 80, Gokhale Market, Opp. New Courts, New Delhi-110001. Pp. xxiv+210. Price Rs.78.

BRYAN A. GARNER, *The Elements of Legal Style* (1991). Oxford University Press, 200, Madison Avenue, New York-16. Pp. 1 viii+236. Price Rs.350.

POORNIMA ADVANI, *Causes of Anti-Social Behaviour and Crime* (1993). Gopushi Publishers, 73, Mehr-dad Cuffe Parade, Bombay-400 005. Pp. xxi+215. Price Rs.125.

S.A. CHARI, *Stay Orders and Temporary Injunction* (1993). Asia Law House, Opp. High Court, Hyderabad. Pp. 130. Price Rs.100.

S.K. ROY CHOWDHURY, *The Indian Succession Act* (1993). N.M. Tripathi (P) Ltd., 164, Samaldas Gandhi Marg, Bombay - 400 002. Pp. xxiii+866. Price Rs.450.

S.K. SHUKLA, *Environmental Hazards and Techno-Legal Aspects* (1993). Shashi Publications, 2-GH-8, Shastri Nagar, Jaipur-16. Pp.xxxvi+397. Price Rs. 250.