

BOOK REVIEWS

THE MALTESE CONSTITUTION AND CONSTITUTIONAL HISTORY SINCE 1813 (1994). By J.J. Cremona. Publishers Enterprises Group Ltd., Malta. Pp. 172.

STUDENTS OF comparative constitutional law will find the book under review to be a very useful publication giving in brief salient features of the Constitution of Malta and important developments since 1813 relevant to the subject. The author has held very high offices in Malta and elsewhere. He has acted as Vice-President of the European Court of Human Rights and European Tribunal in matters of State Immunity (Strasbourg) and as Chairman of the UN Committee on Elimination of Racial Discrimination (New York and Geneva). He holds four doctorates of different universities, drew up the draft of the Independence Constitution of Malta and has been actively associated with constitutional law, having occupied in Malta the high offices of Vice-President of the Constitutional Court and later, Chief Justice. He has the gift of writing concisely with an elegance of style which makes it easy for the reader to understand the broad essentials of constitutional Government in Malta.

The first 61 pages of the book deal with historical developments. The next approximately 60 pages with the present Constitution. The remaining pages are devoted to appendices relating to selected documents of constitutional and historical interest. Students of Indian constitutional law would be interested in a number of provisions as found in the Constitution of Malta. For example, the fundamental rights and freedoms are guaranteed to "every person in Malta" except that the right to, (i) freedom of movement, and (ii) not to be subjected to deportation and discriminatory laws, is guaranteed only to citizens of India. Then it is worth noting that the protected rights cover, (i) the right to life and security of the person; (ii) privacy of the home and other property; (iii) a fair administration of justice (with important safeguards especially for the accused); (iv) freedom of expression (including freedom of the press); (v) freedom of peaceful assembly and association (including the right to form and belong to trade unions); (vi) freedom of conscience and worship; and (vii) the right not to be subjected to, (a) arbitrary arrest and detention; (b) forced labour; (c) any inhuman, degrading punishment, or treatment; (d) collective punishments; or (e) deprivation of property without adequate compensation.

There are interesting provisions contained as to mode of enforcement of the guaranteed rights and freedoms. These provisions, operating on the practical plane, give special significance to protection of the above mentioned rights and freedoms. According to section 46, any person who alleges that any of the human rights provisions "has been, or is likely to be contravened" in relation to him, or such other person as may be judicially appointed at the instance of any person who so alleges, may apply to the Civil Court First Hall (which is the court vested with original jurisdiction in these matters) for redress, which is not restricted, as in

some other constitutions, to named remedies. The court is empowered to "make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement" of any of the protective provisions. It may, however, if it considers it desirable so to do, decline to exercise these powers where it is satisfied that adequate means of redress are or have been available to the person concerned under any other law. Except where the claim has been declared by the court to be merely frivolous or vexatious, an appeal lies as of right to the constitutional court.

A striking feature of these provisions is that the right to move the court is granted also to any person who alleges that any of his protected rights is "likely" to be contravened, which would cover also a reasonable probability that an apprehended action may take place. This is in a sense an interesting extension of the ordinary "victim" concept. Another interesting feature, entailing a certain departure from the ordinary procedural rules, is that the action may also be brought by a person other than the victim himself whenever, at the instance of the victim, such person is so appointed by the court. There is also provision for the making of Rules of Court (which have in fact been made) seeking to ensure a simplified procedure and an expeditious hearing.

In respect of this important part of the Constitution in general, it may not be amiss to add that the often unsuppressed apprehensions and heartsearchings associated with this novel experiment of justiciable bills of rights in Commonwealth constitutions (as it was at the beginning of the sixties) has now happily given way to a confirmed optimism based on positive national and also international experience.

The book is nicely got up and will be found useful by students of law, political science and public affairs.

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