



# Constitutional Law in Malaysia

*Ashgar Ali Ali Mohamed*  
*Muhamad Hassan Ahmad*



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# **CONSTITUTIONAL LAW IN MALAYSIA**

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# FOREWORD



## YANG DI-PERTUA DEWAN NEGARA MALAYSIA

ONCE in a long while comes to the fore a book on the Constitution. This volume brings in a new glow and we are eager to have a look at what brews within its pages. Being a young nation Malaysia's emerging issues on human rights, freedom, separation of power, institutional entrenched provisions and the rule of law in general persist in what appears to be a continually changing kaleidoscope. The publication of this book augurs well with recent developments in various aspects and spheres in the country.

When a publication of this nature is offered to the public, the student or the practitioner in the field will at once glance at the content list and as a topic of choice is seen, his or her interest deepens. This work as ably edited by Prof Ashgar Ali Mohamed and Dr Muhamad Hassan Ahmad draws into focus better exposure of subjects connected with Malaysian constitutional issues. From Constitutionalism to Forced Slavery, the Executive, the Judiciary, the Legislature, Freedom of Religion and the 22 other subjects that this volume offers the established notion that the Constitution is indeed the pillar foundation of the nation from which other appurtenances are built and improved from time to time. 'Improved from time to time'? One may not say it in so many words, but the fact remains that all matters and provisions in the Constitution excepting those that are expressly barred from normal amendment under Art 159, could be amended if wished for by the ruling majority entity in Parliament. It may be said here that the effecting of a country's constitution much depends on the political will and efficacy of the ruling political party. We have seen that in the 1993-1994 constitutional amendments that took away part of the pre-1993 royal immunity was pushed into fruition by an overarching political will

buttressed by a strong political mass. Now, although this politically-created scenario is not discussed in this book, it takes on a non-legal leaning but be that as it may students of the Constitution still need to look in hindsight and assize political assertion that invariably affects democracy and the laws that 'assertion' creates for whatever purpose the political masters may proffer in explaining.

Being a Federation with 13 states and three Federal Territories, there is a division or distribution of powers in Malaysia between central and regional governments, and this division or distribution of powers is based on the Federal Constitution, the supreme law of the country. By virtue of the constitutional supremacy doctrine, the constitution is regarded as the highest authority in a legal system or the highest law of the federation. All the three main organs of the state namely, the executive, legislative, and judiciary as well as all other institutions of the state have to function and operate strictly within the ambit set out in the respective constitution in a given legal system. Further, like other common law countries, Malaysia has her own share of the legal historical antecedent of its constitutional evolution one of which, for example, is the Reid Commission 1957 which amply elucidates major status quo provided in the first version of the Federation of Malaya Constitution. Looking at the development of the emergency powers which shaped the features of its use and the perpetual threat to civil liberties in Malaysia one may express understanding on the intent and purpose as opposed to the end results of each emergency administration. As a result of the amorphous nature, scope and use of these powers, rule of law at times becomes easy twists and convenient turns for the immediate stakeholders.

This book, *Constitutional Law in Malaysia* with its 28 chapters provides an in-depth examination of various important topics of Malaysian constitutional law such as the main characteristics of the Federal Constitution, supremacy of the constitution, separation of powers between the three branches of Government, the position of Islam as the religion of the federation, fundamental liberties, citizenship, the Conference of Rulers, the Yang Di-Pertuan Agong, citizenship, the judiciary, the electoral process, and the powers to combat subversion, among others. This book also discusses Constitution from the Islamic perspective as well as the significance of constitutions in the context of international law. Undoubtedly, this work may find its way to be adopted as a standard textbook on Constitutional Law in Malaysia as it offers valuable information on the intricacies of the workings of Malaysia's supreme law under which the Government of the day exists and operates.

As can be seen through its inner scholarship, this book is an extensively researched work on the subject of Constitutional law in Malaysia. The content of each chapter reflects this fact vividly with the contributors coming from diverse backgrounds and experiences, both academics and legal practitioners. Besides, it is commendable that the style of presentation is simple with the use of easy-to-understand language. This book would be of great interest not only to undergraduate law students but also to the general public who may want to deepen their knowledge and understanding of the essentials of the Malaysian Federal Constitution in its application to the rudiments of Government.

I heartily congratulate the contributors and also the editors for completing this tedious task of merit and successfully coming up with this useful legal material which would certainly contribute to the pool of legal knowledge for years to come.

**TAN SRI DATO' SERI UTAMA DR. RAIS YATIM**

Yang di-Pertua Dewan Negara Malaysia

# PREFACE

Constitutional law, which is the fundamental law of our society, covers a wide range of areas including the rights and powers of the three branches of government, ie, the legislative, the executive, and the judicial. As a country that upholds constitutional supremacy, the Malaysian Federal Constitution establishes the basic framework of the State and Federal relationship, containing a wider range of rights accorded to people and the principles determining the institutions to which the task of governing is entrusted, along with their respective powers. All the three main organs of the State as well as all other institutions of the State have to function and operate strictly within the ambit set out in the constitution.

As succinctly articulated by David Wong JCA in *Datuk Seri Khalid bin Abu Bakar & Ors v N Indra a/p P Nallathamby (the administrator of the estate and dependent of Kugan a/l Ananthan, deceased) and another appeal* [2015] 1 MLJ 353: ‘This country practises Constitutional Supremacy and thus any breach of any Constitutional right must be jealously guarded by the courts and protected with the severity as it justly deserves. A Constitution so to speak is the heart of a country and the blood vessels of the heart are the entrenched rights of every citizen of the country. Any mutilation of those blood vessels must be attended to immediately and with the appropriate measures as any failure to do so would lead to the obvious diagnosis of a weak heart.’

With this backdrop, the book *Constitutional Law in Malaysia* which comprises of 28 chapters, is an all-encompassing book covering a wide range of important areas contained in the Federal Constitution namely, constitutional supremacy, fundamental human rights, federalism, citizenship, elections, roles and powers of the executive, legislature and the judiciary, public services and public servants, Attorney-General, special powers against subversion and emergency powers, constitutional interpretation and constitutional amendments. In addition, the important components of the Islamic constitution and the significant role of constitutions under international law are also featured in this book.

The book is an easy and excellent source of reference for undergraduate law students as it provides a step-by-step guide on the subject with reference to the Federal Constitution and decided cases. The chapters have been written by subject matter experts from different local and foreign universities in simple language and the contents are easily comprehensible.

The non-legal communities who are keen to know about the theoretical and practical application of the Malaysian Federal Constitution would also benefit immensely from this book.

At the outset, we, as the general editors of this title, would like to express our heartfelt appreciation to all the contributors for their extensive research in the collection of law, principles, and authorities. Their research and multifarious knowledge would certainly make this book an excellent source of reference for all those interested in this subject.

Our wholehearted appreciation and thanks are also due to Hon. Senator Tan Sri Dato' Seri Utama Dr Rais Yatim, the President of the Senate (Yang Di-Pertua Dewan Negara), for spending his invaluable time preparing the Foreword to this book. We would also like to extend our gratitude to the publisher, LexisNexis Malaysia Sdn Bhd, and in particular, Christine Ng, and her dedicated colleagues for taking a great deal of interest in the publication and for the support in finally getting this book published.

The applicable laws and the developments stated in this book stand as of 1 October 2022.

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1 October 2022



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## **Chapter 1**

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The *Constitutional Law in Malaysia* comprises of 28 chapters and is an all-encompassing text of constitutional law on a wide range of important areas under the Federal Constitution. It covers topics such as constitutional supremacy, fundamental human rights, federalism, citizenship, elections, roles and powers of the executive, legislature and the judiciary, public services and public servants, Attorney-General, special powers against subversion and emergency powers, constitutional interpretation, and constitutional amendments. The important components of the Islamic constitution and the significant role of constitutions under international law are also featured in this book. The book provides a step-by-step guide on the subject with reference to the provisions of the Federal Constitution and the decided cases of the superior courts. Besides that, the chapters are written in a simple and comprehensive manner so the content could be easily read by all. The theoretical and practical application of the Malaysian Federal Constitution would be an excellent source of reference for undergraduate law students as well as non-legal communities.

**Key Features:**

- Clear and detailed explanation on salient topics of Constitutional Law
- In-depth analysis supported by rich citation of cases and provisions of the Federal Constitution
- Chapter contributors are empanelled from members of academia as well as experienced members of the legislative and executive bodies
- Chapter structure follows the course outline of most Malaysian universities
- Coverage includes the Islamic constitution and the significant role of constitution under international law

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