



Feb 20, 1956 ... The Tunku officially announces the date for Merdeka as Aug 31, 1957 at Bandar Hilir, Malacca. Next to him is a young Ghaffar Baba, who rose to become deputy prime minister.

Major changes to the Constitution

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THE Constitution has been called a nation's "document of destiny" and "national charter" - terms that reflect the importance of the supreme law of the land.

Like a legally binding contract, any amendment assumes fundamental significance and hence, should not be easily done.

That said, changing political, economic and social circumstances have created the need to amend the original contract - some for justifiable reasons, while others are more controversial.

For example, when Sabah, Sarawak and Singapore joined Malaya to form Malaysia in 1963, the Malaysia Act was passed in Parliament to amend the Constitution to provide for the name change and the inclusion of the three new states.

More controversial were the 1993 amendments that limited the monarchy's power, stripping the nine hereditary state rulers of immunity from prosecution. This came about after an incident where the then Sultan of Johor allegedly assaulted a sports coach.

Malaysia's Federal Constitution has been altered extensively since our independence in 1957.

Up to early this year, there have been 51 amendment Acts, said constitutional law expert Professor Shad Saleem Faruqi.

Each amendment involved a number of clauses, and if these are used to measure the extent of constitutional revision, there have been about 700 changes or "strokes of the pen" since the constitution came into force, said the Universiti Teknologi Mara law lecturer.

H.P. Lee wrote in the chapter "The Process of Constitutional Change" in *The Constitution of Malaysia - Its Development: 1957-1977*: "In subscribing to the adage that a constitution which cannot bend will ultimately be broken, one must also be aware of a constitution which is extremely easy to amend for it may

turn out to be worse than having no constitution at all?"

He observed that some of the more fundamental amendments to the Malaysian Constitution has led to "a truncation of safeguards which had been considered by the Reid Commission as vital for the growth of a viable democratic nation".

The provision to amend the Constitution falls under Article 159. The Reid Commission framed it in such a way that an amendment would not be too difficult to the extent of frustrating the need for amendment, but at the same time, not too easy that it would end up weakening our constitutional safeguards.

The constitution can be altered through an amendment Act supported by two-thirds of the members of Parliament.

Sensitive Matters Amendment

One of the most controversial amendments in Malaysia's Constitution is the Constitution (Amendment) Act, 1971, which came in the wake of the May 13, 1969 racial riots.

Known as the "Sensitive Matters Amendment," it revised Article 10 - which safeguards freedom of speech - to empower Parliament to pass laws to restrict public discussion on four "sensitive" issues: citizenship; the national language and the languages of other communities; the special position and privileges of the Malays and natives of the Borneo states, and the legitimate interests of other communities; and the rulers' sovereignty.

Before the Act, the Conference of Rulers' consent was required only for amendments to provisions related to the rulers, and the special rights and privileges of the Malays and the legitimate interests of other communities.

As a result of the Act, consent was also required for other provisions, such as Article 10 (freedom of speech), Article 65 (privileges of Parliament), Article 72 (privileges of the state legislative assembly) and Article 152 (national language).

Article 153 originally provided for

the Yang di-Pertuan Agong to be the guardian of the special position of the Malays and the legitimate interests of other communities. It also empowered him to ensure that a reasonable proportion of opportunities was reserved for the Malays in public service, education, and for permits and licences.

The 1971 amendment allowed the natives of the Borneo states to have the same status as the Malays.

It also empowered the Agong to direct any institution of higher learning to reserve a reasonable proportion of places for the Malays and natives, should the number of places be less than the number of qualified candidates.

Judiciary

Another milestone in the Constitution's evolution was the amendment to Article 121 in 1998, which effectively put the judiciary under Parliament's influence. The attorney-general was also empowered to determine the courts for cases to be heard.

To the legal fraternity and civil society, this eroded the judiciary's autonomy and weakened the separation of powers between the three branches of government - the judiciary, the executive and the legislature.

The amendment came in the wake of a series of court cases where the executive accused the judiciary of encroaching on its powers. These cases included a court ruling overturning the government's decision to revoke a foreign correspondent's work permit, judicial reviews of ministerial decisions such as the award of the North South Highway project to UEM, and the declaration of Umno as illegal following a dispute over the party's election in 1987.

Then Lord President, Tun Salleh Abas, and several judges, wrote a letter to the King about the efforts to undermine public confidence in the judiciary. He was charged with writing the letter without the approval of all the judges and displaying bias against the government, and was dismissed in August 1988.

Five Supreme Court judges who objected to the tribunal set up to decide Salleh's fate were suspended. They were the late Tan Sri Wan Suleiman Pawanteh and Tan Sri Eusoffe Abdoolcader, Tan Sri Azmi Kamaruddin, Tan Sri Wan Hamzah Salleh and Datuk George Seah.

After Salleh's dismissal, a second tribunal was convened to deal with the five judges, resulting in the dismissal of Wan Suleiman and Seah, while the others were acquitted.

Another amendment in 1988 resulted in Article 121 (1)(A), which stipulated a separation of jurisdictions between the civil and syariah courts, whereby the former would have no say over any matter under the syariah court's purview.

"The amendment left many unanswered questions. It was done with good intentions so that only lawyers trained in syariah law would handle syariah issues," Shad said.

"However, it does not offer a solution when one party is a non-Muslim, when there are international implications, if it is a constitutional issue and involves a remedy which the syariah court has no right to grant such as *habeas corpus* and *mandamus* (the domain of the High Court)."

In recent years, there have been cases where a non-Muslim party to a case has been told to seek recourse at the syariah court.

"The civil courts have started to abdicate or cede jurisdiction when there is the slightest whiff of an Islamic issue," Shad said.

"The syariah court has broken the dyke, the civil court has looked the other way."

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