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Defending our chart and compass

Constitutional expert Prof Dr Shad Saleem Faruqi shares his passion for a national treasure that has guided this country's democratic journey for half a century.

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MY book is important because the Constitution is under attack," says Prof Dr Shad Saleem Faruqi somewhat alarmingly.

The silver-haired gent is fresh from the launch on Thursday of *Malaysia's Document of Destiny - An Introduction to the Federal Constitution*, an epic work dealing with the document that has helped shape our country.

While he is impeccably attired and speaks in cultured tones, his fierce commitment to defending this country's Constitution is unmistakable, and Shad finds himself an important thinker in an ideological war.

"The Constitution is under attack by a number of people who believe that we should move towards the Islamic state. It is under attack by those who feel that the 'social contract' must be renegotiated.

"Frankly, it is also undermined by judges and civil servants who apply their own interpretations of the Constitution and allow their personal allegiances to colour the practical application of the laws that govern our country."

Just why is it important that this document needs to be so fiercely defended?

"In pre-legal or under-developed societies, religion or custom provided the base upon which people lived their lives. However, in a developed system you need political laws to form the nation.

"The Constitution performs a number of functions. It creates the branches of government and confers powers upon these branches.

Importantly, "It also imposes limits on these powers and describes

the relationship between the various arms of government, the King and the Prime Minister, the Federal and State Governments, the Dewan Rakyat and Dewan Negara, and so on."

Shad explains that the Constitution delineates a state's relationship with its citizens, setting out their rights to life, liberty, property ownership, freedom of speech, and freedom of religion.

Despite his obvious passion for these legal documents, Shad admits that a Constitution is by nature imperfect.

"Life is larger than the law, and there will be many situations in which the law provides no guidance. "A Constitution is sure to be full of ambiguities and conflicts. It seeks to strike a balance between might and right, to permit liberty, while at the same time enforcing responsibility."

Checks and balances

The Malayan Constitution was first framed in 1956 and took effect upon Merdeka, on Aug 31, 1957.

It was subsequently revised upon the union of Sabah, Sarawak, and Singapore with Malaya to form Malaysia on Sept 16, 1963.

Since that time, however, it has experienced more than 600 amendments. That works out to an average of 13 changes a year since 1963! It

almost seems as if this important document, fundamental to our democracy, has been tampered with willy-nilly....

Considered globally, this is, in fact, an unusual number of changes. They were possible because Malaysia's ruling coalition (first the Alliance Party, and now the Barisan Nasional) has always commanded a two-thirds majority in Parliament, enabling it to change the Constitution at will.

This situation finally changed following the March 8 General Election - and Shad seems rather pleased about this.

"In any context, it is not good to give overwhelming power to one person or group of people. Power, like wine, goes to the head, and there is no man or woman alive who can be trusted with absolute power.

"The system needs checks and balances, and that is why the current political situation is preferable from the point of view of a Constitutional advocate.

"It means that the Government can function, pass laws, implement policies, but is not so strong as to ride roughshod over dissenting opinions.

"Indeed, the last general elections indicated a large gap between public and Government perception on many issues, which I believe is a result of having a press that is not free. The irony is that the Government wished for and received a compliant media, and then it proceeded to believe its own press!"

One of the more worrying Constitutional issues of late has been freedom of religion, specifically the freedom accorded to a Malay who wishes to change his religion.

"Here we have a classic conflict between freedom of religion and issues of apostasy," says Shad. "In general Malaysians do have the freedom to profess and worship. But one has to ask, where does one draw the line on freedom of religion?"

"Does it include the right to devil

worship? The right to blaspheme other religions?"

"But I don't know of any other country in the world where race is as tied so closely to religion as it is in Malaysia for the Malays and Islam.

"In other Muslim countries, race is race, religion is religion. Here, there is no freedom to exit the religion because it is tied to political power."

In their opinion

Shad's willingness to discuss such issues openly means that he is open to attacks himself.

"I get a fair amount of feedback on my column in *The Star*. (*Reflecting on the Law* appears every fortnight, on Wednesdays, in the Views pages.)

"I would say that 60% are supportive, 30% oppose me, and 10% are abusive! I have learnt to live with it. I want to protect the Constitution but some think I am too liberal and others think I'm too conservative!"

However, Shad's intellectual openness has also won him many friends.

Bar Council Human Rights Committee chairman Edmund Bon says, "I applaud Shad because he is one of the few scholars who will speak freely about religious freedom in this country. He is also very active

in promoting Constitutional awareness.

"His column is an excellent forum to expose Constitutional and human rights issues, and is useful to the lay person because it is written in a way that is easy to understand without detracting from the importance of the issues at hand."

Dr Sarjit S. Gill, professor of Social Anthropology at Universiti Putra Malaysia, agrees.

"I think he's doing a very good job. Shad is known as a man of principle, who is critical with his work and who is not afraid to be critical of the Government in defence of the Constitution.

"That is something that is lacking in Malaysia, the ability to have healthy debate on important issues and take the opposite view if need be – we have many 'yes men' professors in Malaysia.

"The younger generation should take their cue from Shad, whose work is well-known internationally not just in Malaysia."

Guided by moderation

Still, Shad acknowledges that, ulti-

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mately, the Constitution is only a guide to how a society should run.

"It is not enough to merely have a well-framed Constitution.

"One of the most beautiful Constitutions I have ever read was that of the old USSR. However, it was clearly not a functioning one. In other cases, such as India and the Philippines, there are wonderful freedoms promised in the Constitutions but they are paper rights because so many are engaged in a struggle for survival.

"In certain countries like France, Switzerland, and Sweden, there is less of a dissonance between the promise and the performance of the Constitution.

"However, the dissonance is very large in the United States, particularly if one looks at the African-American community.

"In Malaysia, the society that has evolved is one that has a strong economic base but is lacking in civil and political rights.

"Despite wastage and corruption, we were given a head start because we had a globalised economy before globalisation.

(Malaysia was integrated into the world economy from as far back as colonial times thanks to worldwide demand for our rubber and tin, among other resources.)

"Malaysia is not a failure by any means, but in terms of rights we are still in the era of the Emergency.

(The Emergency was declared by the British in June 1948 to battle a communist insurgency.)

"If we look at the Internal Security Act (enacted in 1960), it is not the most barbaric preventive detention clause in the world, nor am I opposed to preventive detention on principle, but it is the indefinite detention without charge that is so alarming.

"In such cases, the executive is the accuser, the adjudicator, and the executioner, which is simply unconscionable.

"Greater freedom must be given to civil society if we are to evolve."

Shad believes that Constitutional literacy is an absolutely essential tool

if Malaysians are to develop a keen political and civil consciousness.

"The Constitution is our chart and compass. I think knowledge of the Constitution is a pre-requisite to good citizenship.

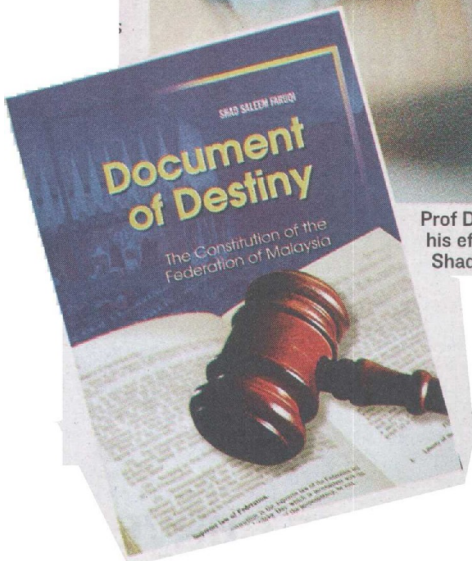
"The Constitution is the guardian of our rights and the source of our freedoms. Yet it is not even taught in universities except to those studying law.

"Members of Parliament and senior civil servants can be blissfully unaware of the provisions of the Constitution.

"The youth are terribly ignorant of the painstaking process under which it was forged by leaders who had to battle extremism from within and without their respective communities.

"The Malaysian Constitution was not framed by ideological passion, but guided by the spirit of moderation.

"It has reconciled the seemingly irreconcilable conflict of interest between ethnic and religious groups in a way that has few parallels in the modern world."



Prof Dr Shad Saleem Faruqi feels that knowledge of the Constitution is a pre-requisite to good citizenship, hence his effort to publish his latest book. – CHUA KOK HWA / The Star

Shad's new book, *Document of Destiny* (left), is a historical and legal analysis of the Malaysian Constitution.

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»The Malaysian Constitution ... has reconciled the seemingly irreconcilable conflict of interest between ethnic and religious groups in a way that has few parallels in the modern world«

PROF DR SHAD SALEEM FARUQI

It seems as if the Constitution is pulled out only when there's a political kerfuffle – which is a pity, as it should be part of every citizen's everyday life, contends Shad. Photo shows MCA Youth chief Datuk Liow Tiong Lai (at rostrum) and Youth committee members holding up copies of the Constitution as they pledge to defend its sanctity at MCA's annual general assembly last year. Seated in front is party deputy president Tan Sri Chan Kong Choy. – File photo / The Star

Landmarks

JAN 18, 1956: The Reid Commission was formed to carry out a Constitutional conference held in London.

Aug 31, 1957: The Constitution takes effect upon Malaya's independence.

February 1962: The Cobbold Commission begins its study to incorporate the needs of Sabah and Sarawak into the Constitution of the proposed new nation, Malaysia, to be made up of Malaya, Singapore, Sabah, and Sarawak.

July 9, 1963: The Malaysia Agreement is signed by Malaya, Singapore, Sabah, and Sarawak.

Sept 10, 1963: The Kelantan State Government begins action against the Federal Government in protest against the Malaysia Agreement.

Sept 16, 1963: Malaysia is formed, and a revised Constitution takes effect.

Sept 23, 1966: A crisis erupts in Sarawak when Chief Minister Stephen Kalong Ningkan is unconstitutionally sacked by the state's Governor.

May 17, 1969: The Constitution is effectively sus-

pendent under a state of emergency following racial riots on May 13.

Aug 31, 1970: The Rukun Negara (National Principles) amendments are made to the Constitution.

Nov 8, 1977: Emergency rule lasting three months is proclaimed in Kelantan after a vote of no confidence is passed against the then Menteri Besar, Datuk Mohamad Nasir.

Aug 3, 1983: A Constitution Amendment Bill is passed by Parliament but not agreed to by the Malay Rulers.

1988: The year of the judicial crisis when then Lord President Salleh Abbas and five senior judges were either removed or suspended from office.

1992: Following an assault allegedly committed by the Sultan of Johor, Constitutional amendments were proposed to remove the immunity against prosecution enjoyed by Malay rulers.

May 30, 2007: The Federal Court dismisses Lina Joy's appeal to remove the word Islam from her identity card. – Source: 'Constitutional Landmarks in Malaysia', edited by Andrew Harding and H.P. Lee (ISBN: 978- 9679628197)