

Inez Devina Clarisa¹, Margareta Sevilla Rosa Angelin²

Book Title : Unstable Constitutionalism: Law and Politics in South Asia
Writer : Madhav Khosla, Mark Thusnet, and Other Contributors
Publisher : Cambridge University Press
Publication Year : 2015
Book : ix + 403 page
ISBN : 978-1-107-64456-4

The character of South Asian constitutionalism is described by unstable constitutionalism. Unstable constitutionalism refers to a phenomenon in which all participants in national politics appear to be sincerely committed to the idea of constitutionalism – if not always a fully liberal constitutionalism, then certainly one that hopes to establish reasonably permanent institutions with the capacity to address issues of daily governance – yet they struggle to settle on a stable institutional structure embodying a form of constitutionalism appropriate to their nation. The design issues are significant; a unitary national government, symmetrical or asymmetrical federalism, confederation, and more.

The term unstable constitution aims to capture the difficulties that the law faces in mediating between legal norm and sociopolitical facts, as well as the pressing challenges involved in giving constitutionalism a character that can move a nation from civil disorder to stability, thereby importantly transforming persistent features of the nation's experience. Although constitutional instability often takes place under conditions of ethnic conflict, social disorder, and profound diversity, the parties involved nonetheless are committed to the idea of a single state. They want to arrive at some type of constitutional contract rather than simply secede and not contract at all; the tensions exist because of disagreement about the terms of the contract.

Constitutional instability can be revealed in several ways and can occur for various reasons. It may involve recurring extra-constitutional pressures on a constitutional system and extra-legal sites of power that challenge the system. On other occasions, institutions within the formal legal framework exercise powers in ways that begin to threaten the overall stability of the system. Form of instability can persist and prevent the very construction of an institutional framework that is process-based and substantive disagreements impede constitution making.

Constitutional instability can take numerous forms. Disagreement might be so intense that countries find it difficult to even draft a constitution in the first place, despite widespread support among different political actors for establishing a constitutional framework. Once established, the constitutional framework might be subject to various types of instability. Institutions may cross their demarcated boundaries to such an extent that they threaten the division of labor on which the constitution rests and then attempt to usurp power from other institutions and relocate sovereignty. The examples are the military, institutions

¹ Fakultas Hukum Universitas 17 Agustus 1945 Surabaya, Jalan Semolowaru Nomor 45, Surabaya 60118, Indonesia | 082231684445 | inezdevina1@gmail.com.

² Fakultas Hukum Universitas 17 Agustus 1945 Surabaya, Jalan Semolowaru Nomor 45, Surabaya 60118, Indonesia | 082231684445 | margarethaelisa03@gmail.com.

of civil society especially religion that are protected by constitutional rights. A constitution also might be threatened by extra-constitutional forces, such as paramilitary or radical ethnic and religious groups that seek to construct an entirely different constitutional order.

This considers five South Asian nations – Bangladesh, India, Nepal, Pakistan, and Sri Lanka – in an attempt to understand the region as a whole. These nations are dissimilar in important respects, and each has been subject to varying degrees of interest among comparative constitutional lawyers.

Nepal in recent years has struggled to write a constitution. The instability in Nepal's constitutional order and the historical failure to arrive at a stable constitutional regime stems from an inability to entrench the doctrine of popular sovereignty and to secularize political authority. The failure of Nepal's various constitutional arrangements to give due importance to the representative arm of government, reining in monarchical and executive power, and to respond to calls for an inclusive democratic state have been notable features in its recent history. Nepal has different point of emphasis, focusing on the relationships among constitutional instability, identity politics, and diversity. Studying how Nepal's various constitutional arrangements have addressed the question of diversity and the degree of participation they have granted toward different groups.

Pakistan is in many ways an ideal candidate for the study of constitutional instability. For much of its history, Pakistan has oscillated between military and civilian rule and has been a country defined by extra-constitutional pressures on its formal constitutional system. There are three forms of instability that threatened Pakistan's constitutional order. The first form consists challenges to parliamentary sovereignty by the bureaucracy and by the military. Second, Pakistan has witnessed claims for decentralization and provincial autonomy by ethno-regional forces that have sought to restructure the relationship between the Pakistani state and its constituent units. The third source of instability is religion, which manifests through attempts at shariatization of the state and the steady increase in the religious character of Pakistan constitutionalism.

New democracies often have given special attention to elections; India is a notable example with its unique Election Commission – a body that is often credited with conducting uncontroversial elections in an otherwise corrupt nation. Since Bangladesh's emergence from military rule two decades ago, few issues have dominated its constitutional discourse as much as the electoral process. In 1996, the 13th Amendment to the Constitution of 1972 introduced a system of "caretaker governments" that gave the historical and legal circumstances in which it arose and highlights its adverse impact on the Election Commission, the judiciary, and the democratic politics in Bangladesh more generally until it was scrapped by the 15th Amendment in 2011. The Bangladesh experience vividly illustrates the challenges involved in making constitutions perform in unsupportive political climates and the institutional damage that can occur by being insensitive to formal standards and conventions. Bangladesh's political actor lack agreement on the central democratic exercise of politicizing elections, which has been a profound source of constitutional instability in the country.

This book certainly has advantages and disadvantages. First, advantages from this book is this book can explain and compare how the law and politics condition in South Asia. So that the reader is expected to know which countries in South Asia (India, Bangladesh, and Sri Lanka) has a law and politics is good for their citizen. And the second is

DiH: Jurnal Ilmu Hukum
Volume 15 Nomor 2
Agustus 2019 - Januari 2020
Inez Devina Clarisa
Margareta Sevilla Rosa Angelin

disadvantages from this book. This book has a language that is difficult to understand. At least the reader is slightly confused by the actual intent of the contents of this book.