

FROM: THE DESK OF **J B JEYARETNAM**

CAPTURING OUR RIGHTS FROM THE PAP

FIRST INSTALLMENT

The Constitution is the peoples' charter.

The first Constitution of Singapore was drawn up in 1958 in consultation with all the political parties representing the people of Singapore.

It was later replaced by a new Constitution when Singapore became part of Malaysia in 1963 but retained all the fundamental rights of the citizens in the 1958 Constitution.

When Singapore broke away from Malaysia, the 1963 Constitution (known as the Malaysian Constitution) was modified and adapted to take note of Singapore as an independent state and came to be known as the Constitution of the Republic of Singapore. It retained all the fundamental rights of the citizen.

The Constitution is the guarantee of the peoples' rights, freedoms and liberties but under the PAP government it has become the PAP charter.

After the PAP took control over Singapore in 1965, the PAP has amended the Constitution several times to attain its object to give the Executive= more and more power designed to keep the PAP in power. As a corollary to giving the Executive supreme power the PAP cut down the power of the Judiciary which in a democracy has a very important role - to check the power of the Executive.

In its brief span of about forty (40) years, the Constitution of Singapore has been amended many many more times than the American Constitution stretching over 200 years.

If the people are to have the power in the land and not just a few (in Singapore it is really one family), the Constitution has to be captured back from the PAP and made the Peoples' Charter guaranteeing them all their rights and liberties and providing proper checks on the Executive with swift remedies for any violation of the Constitution.

I therefore welcome the campaign by Uncle Yap (Keng Ho) to acquaint our citizens with what changes are necessary to capture OUR Constitution back from the PAP.

The first change that is necessary is to entrench our fundamental liberties and to plug the loopholes by enacting our rights more precisely giving no room from manipulation by the Executive.

Our fundamental liberties are at the moment found in Part IV of the Constitution from Article 9 to Article 16.

Article 9(1) reads as follows:-

“No person shall be deprived of his life or personal liberty save in accordance with the law.”

The phrase "save in accordance with the law" has allowed the PAP to justify detention without trial on the ground that the detention has been carried out in accordance with the law - the internal Security Act and the Criminal Law Temporary Provisions Act. We have got to change that.

Article 9(1) should be re-drafted to read:-

"No person shall be deprived of his life or personal liberty except and save only on the order of a lawful court constituted under the Constitution made upon evidence admissible in law and where the person accused has had a fair trial."

This amendment will sweep away the Executive's power to put into prison who the Executive thinks should be put into prison.

Article 9(3) of the Constitution concerns the rights of person who are arrested and needs to be tightened.

Article 9(3) reads as follows:-

"Where a person is arrested, he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice."

Following a decision of the High Court in the 1980s, the police deny any person arrested by them any access to a lawyer until after they have completed their investigations.

This is very detrimental to the person who has been arrested who needs to know what his rights. are under the law before the police interrogate him. At the moment, some accused persons have been denied any access to lawyers for periods up to three or four weeks from the time of the arrest. The police have also withheld visits from the family, spouse or parents or children of the accused until they have completed their investigations and have used this power as threat to obtain admissions from the person arrested.

Article 9(3) should be amended to read:-

"Where a person is arrested, he shall be informed immediately of the grounds of his arrest unless that is not practicable or the reason for the arrest must be apparent to the person arrested and shall be allowed to consult and be defended by a legal practitioner of his choice within twenty-four (24) hours of his arrest. The family of the person arrested shall be notified: within twenty-four (24) hours of his arrest and shall be allowed to visit the person arrested."

Article 9(4) should also be amended. At present it reads as follows:-

“Where a person is arrested and not released, he shall without unreasonable delay, and in any case within 48 hours (excluding the time of any necessary journey), be produced before a magistrate and shall not be further detained in custody, without the magistrate's authority.”

It should be amended to read:-

“Where a person is arrested and not released, he shall, without unreasonable delay, and in any case within 48 hours (excluding the time of any necessary journey), be produced before a magistrate and shall not be further detained in custody if the offense upon which he is arrested is bailable unless the magistrate, for good reasons shown to him and recorded by him, orders further detention. The bald statement by the police that further detention is required for further investigation shall not be a good reason.”

Article 9(6) was introduced by the PAP in 1978 to legalize the detention under the Internal Security Act.

Article 9(6) now reads as follows:-

"Nothing in this Article shall invalidate any law -

(a) in force before 16th September 1963 which authorizes the arrest and detention of any person in the interests of public safety, peace and good order; or

(b) relating to the misuse of drugs or intoxicating substances which authorizes the arrest and detention of any person for the purpose of treatment and rehabilitation,

by reason of such law being inconsistent with clauses (3) and (4) and, in particular, nothing in this Article shall affect the validity or operation of any such law before 10th March 1978."

The legalization under (a) of detention without trial should be repealed and Article 6 should be amended to read:-

"Nothing in this Article shall invalidate any law relating to the misuse of drugs -or intoxicating substances which authorizes the arrest and detention of any person for the purpose of treatment and rehabilitation by reason of such law being inconsistent with clauses (3) and (4) of this Article, "

I think we should retain the power of the Executive to compulsorily commit drug addicts to centers for their treatment and rehabilitation. But this power has to be cut down to make the detention conditional upon a certificate of a panel of doctors certifying that the detention is necessary for the treatment and rehabilitation of the drug addict.

The next Article that needs to be changed is Article 14 of the Constitution which provides for freedom of speech, assembly and association.

Article 14 reads as follows:

"subject to clauses (2) and (3) -

- (a) every citizen of Singapore has the right to freedom of speech and expression;***
- (b) all citizens of Singapore have the right to assembly peaceably and without arms; and***
- (c) all citizens of Singapore have the right to form associations.***

(2) Parliament may by law impose-

- (a) on the rights conferred by clause (1)(a), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, friendly relations with other countries, public order or morality and restrictions designed to protect the privileges of Parliament or to provide against contempt of court, defamation or incitement to any offense;***
- (b) on the right conferred by clause (1)(b), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof or public order; and***

(c) on the right conferred by clause (1)(c), such restrictions as it considers necessary or expedient in the interest of the security of Singapore or any part thereof, public order or morality.

(3) Restrictions on the right to form associations conferred by clause (1)(c) may also be imposed by any law relating to labor or education.

What needs to be changed here is sub-article 14(2) which allows the Executive to take away the rights granted by sub-article 14(1).

The Executive in Singapore has abused this proviso and it should be amended to read as follows:

" The rights conferred by Article 14(1) shall, however, be subject to:-

(1) any law or regulation made thereunder passed by Parliament governing the security of Singapore;

(2) any law or laws governing contempt of court;

(3) any law or laws governing defamation;

(4) any law or laws governing public order and stability.

It shall not be a defense to anyone prosecuted under the aforesaid laws that they were exercising their rights under Article 14(1) of the Constitution. "

We should also entrench the fundamental rights from any repeal or amendment unless we agree to any amendment or repeal by not less than 80% of the votes cast by us at a national referendum held to obtain our consent.

We should add another article to Part IV to read as follows:-

(1) No amendment of or to any Article in this Part shall be passed by Parliament unless the

proposed amendment has been supported at a national referendum by not less than four-fifths (4/5) of the total number of votes cast by the electors under the Parliamentary Elections Act;

(2) In this Article "amendment" includes addition and repeal.

I have in this release dealt with our fundamental rights which are of prime importance.

I shall in further installments examine the other articles in the Constitution which need to be amended.