Constitutional Remedies in Asia Conference
Friday, 15 Dec 2017, 1000-1730
11/F Cheng Yu Tung Tower, HKU

Where courts are empowered to review the constitutionality of legislation, the standard practice is for the judiciary in Asia to invalidate the law, when it is deemed unconstitutional, to the extent of its inconsistency.

In common law systems, the invalidation operates immediately and retrospectively. This traditional understanding of remedial redress dates back to William Blackstone who argued that it is a settled and invariable principle in the laws of England, that every right when withheld must have a remedy, and every injury its proper redress. Furthermore, judicial commitment to the separation of powers principle – a general rule observed in both civil and common law Asia – would dictate that courts leave it to the legislature to introduce corrective legislation post-invalidation.

However, with the rise of the modern state, and the realist swing towards remedial discretion, both common law and civil law courts in Asia have devised novel constitutional remedies that complement this strike-down power, usually in the absence of explicit constitutional or statutory authorization. In this Conference, we shall examine four such constitutional remedies: (1) Prospective Invalidation; (2) Suspension Order; (3) Remedial Interpretation; and (4) Judicial Directive. In enforcing these four remedies, the courts have either intentionally delayed or expedited a remedy that generally follows from the judicial declaration of an unconstitutional practice, thereby blurring the traditional dichotomy between adjudication and legislation.

1000
Overview of Constitutional Remedies in Asia
Dr. Po Jen Yap

Panel 1: Prospective Invalidation in Asia
Prospective Invalidation in Indonesia
Dr. Stephanus Hendrianto (Boston College)

Prospective Invalidation in Bangladesh
Mr. Jashim Ali Chowdhury (University of Chittagong)

Commentary:
Prof. Simon Butt (University of Sydney)
Prof. Mark Tushnet (Harvard Law School)

1330
Panel 2: Suspension Orders in Asia
Suspension Order in Taiwan
Dr. Ming-Sung Kuo (University of Warwick)

Suspension Order in Hong Kong
Ms. Swati Jhaveri (National University of Singapore)

Suspension Order in Indonesia
Dr. Fritz Siregar (Jentera School of Law, Indonesia)

Suspension Order in South Korea
Prof. Woo-Young Rhee (Seoul National University)

Commentary:
Prof. Robert Leckey (McGill)
Prof. Mark Tushnet (Harvard Law School)

1600
Panel 3: Remedial Interpretation and Judicial Directives in Asia
Conditional Constitutionality in Indonesia
Prof. Simon Butt (University of Sydney)

Structural Injunctions and Judicial Directives in India
Dr. Chintan Chandrachud (UK)

Commentary:
Prof. Kent Roach (University of Toronto)

REGISTRATION IS REQUIRED. To register, please click here. For inquiries, please email Winnie Law at winniewm@hku.hk.