

# 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)