



Discussion Paper No.19

**Emergence and Features of
the Constitutional Review Bodies in Asia:
A Comparative Analysis of
Transitional Countries' Development**

Edited by Aziz Ismatov and Emi Makino

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FOREWORD

This research discussion paper provides a study on theory and practices of constitutional review developments in five selected Asian jurisdictions, Myanmar, Singapore, Korea, including Russia and Uzbekistan, which in some scholarly works are also addressed as Eurasia. The objective is to create systematic narratives to document theoretical grounds and practical aspects of constitutional review, collect and present to a broader audience comparative, historical, analytical, and critical perspectives covering constitutional judiciary in Asia. We hope that this collection will be of high interest for scholars, practitioners, and students of comparative constitutional law, human rights, democracy, the rule of law, constitutional adjudication, and Asia's legal systems.

The general philosophy of constitutional review presupposes that constitutional courts are established to limit or balance executive and legislative branches' activities. In such circumstances, scholars and practitioners expect that constitutional courts would work as neutral arbitrators among the two branches. Simultaneously, the vital role of the constitutional court which is a protection of fundamental rights is sometimes neglected within the broader context of political involvement.

Contributors to this discussion paper were all invited to attend the workshop on Emergence and Features of the Constitutional Review Bodies in Asia held at the Department of Law, University of Yangon, on October 22, 2019, and present their draft papers for this workshop. This research project was made under the auspices of Core-to-Core Program: Asia-Africa Science Platforms 'Advancing Research in Asian Constitutionalism - Establishing a Transnational Research Network to Promote Human Rights and Legal System' and, Grants-in-Aid for Scientific Research 'Commencement of the ASEAN Community and the Emergence of Heterologous Constitutional Profiles in the Region.' Both projects are funded by the Japan Society for the Promotion of Science (JSPS). The manuscripts submitted by the participants to the workshop were later revised and prepared for this unique publication.

The primary aim of the present research series is to analyze the theoretical background and practical experience of the constitutional review bodies in the context of comparative aspects with foreign constitutional review bodies. Also, it will seek to understand the concept and ideas on constitutionalism in Asia and constitutional review bodies' place in it. This workshop involved researchers from Japan, Korea, Singapore, Myanmar, and other jurisdictions. The participants had an opportunity to share their views with colleagues and learn from each other in terms of historical features, duties and functions, and selected cases of constitutional review bodies in different countries. This workshop also strengthened the relations between involved scholars and contributed to the creation of the international research network on Constitutionalism in Asia.

Aziz Ismatov
Emi Makino

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Justice. Hla Myo Nwe holds the position of Member of the Constitutional Tribunal of the Republic of the Union of Myanmar since 2013. She completed LL.B and LL.M degrees from Art and Science University, Yangon, Myanmar in 1976 and 1982 respectively. After graduating, she became a Tutor at her alma mater for two years and later joined the International Law and Treaties Department, Ministry of Foreign Affairs from 1980 to 2013, where she became Deputy Director General. During her diplomatic career, she served at Myanmar Embassies in Malaysia, the Philippines, Thailand, Singapore, Egypt and the United Kingdom. She was also assigned as the Co-Agent of the Republic of the Union of Myanmar over the Maritime Boundary Delimitation Case with Bangladesh at the International Tribunal for the Law of the Sea (ITLOS).

She has given numerous presentations at both international and local conferences, meetings and workshops relating to law. Her significant publication is the book, *The First Case in the History of Myanmar by Settling the Dispute on the Maritime Boundary Delimitation*. She also wrote many articles in local newspapers and law journals. Last year, she participated in the Second International Symposium of the Asian Association of the Constitutional Court and Equivalent Institutions (AACC) and she wrote the research paper on Constitutional Review in Myanmar.

She has also strongly advocated for the rights and protection of Myanmar nationals working overseas. During a career, spanning 45 years, she has developed a reputation for a tireless work ethic, dedication and commitment.

Khin Phone Myint Kyu holds the position of Professor at the Department of Law, University of Yangon. She has an LL. B. degree from the University of Yangon (Myanmar) in 1984. After that, she completed LL. M. and Ph. D. degree in Civil Law specialization from the same University.

In 2007-2008, she participated as a commissioner of the Drafting Commission of the Constitution of the Union of Myanmar. In this current position, Dr. Khin Phone Myint Kyu is engaged as a member of the ASEAN Law Association (Myanmar) and Curriculum and Syllabus Committee of Civic and Moral Subject for Basic Education. Her research interest is in the field of Family Law, Civil Law, and Public Law. She has published her research papers in the field of Family Law, Comparative Legal Education, Civil Law Legal Education, and Public Law.

Khin Khin Oo, Professor at the Department of Law, University of Yangon (Myanmar), received her LLB (1993), LLM (1997), and PhD in Law (2005) degrees from University of Yangon. Her teaching career has begun as tutor at Law Department of Dagon University in 1995; and afterwards she has been teaching and researching at a number of Myanmar universities' law departments. Her area of specialization is civil law – particularly criminal law, family law, constitutional law and administrative law, corporate law and child rights. In 2004, she did part of her research for PhD degree at International Institute for the Rights of the Child (IDE) in Sion, Switzerland. She was a

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Professor Lee worked as Visiting Scholar at Freie Universitaet Berlin (1999) and the Federal Constitutional Court of Germany (2006). He moved to Seoul National University and worked as an Associate Dean for Student Affairs, at School of Law between 2012-2014, as an Executive Director, SNU Foundation between 2015-2019, and as a Dean of Planning and Coordination in 2018. He also worked as a Counterterrorism Human Rights Protector at National Counterterrorism Committee, Office of the Prime Minister (2016~2018). He was a member of the Constitutional Amendment Advisory Committee, National Assembly (2014), and a member of North-South Relation's Development Advisory Committee, National Assembly (2015). He recently worked as a Visiting Research Fellow at the Center of Asia Legal Exchange (CALE), Nagoya University (2019).

He published many articles and books on Constitutional law and North Korean laws. His recent publications include; Understanding on Korean Unification Law (2018), and Peace and law (2018), Understanding on Constitutional Law of Korean Unification (2016), 70 Years of Korean Politics (co-author), Academy of Korean Studies Press (2015), Law and Policy on Korean Unification: Analysis and Implications (co-author), Korea Institute for National Unification (2014). Currently, he serves as Director at Center for Constitutional Law and Korean Unification Law, Seoul National University.

Jaelyn L Neo is an Associate Professor of Law at the National University of Singapore (NUS). She specializes in constitutional law, as well as law and migration, and has degrees from NUS Faculty of Law and Yale Law School. Her work aims to forefront Asian jurisdictions and mainstream them in comparative constitutional law.

Jaelyn has published in leading journals in her field, including the *International Journal of Constitutional Law* (I-CON), *Oxford Journal of Law and Religion*, *Human Rights Quarterly*, and the *Singapore Journal of Legal Studies*. She is the sole editor of *Constitutional Interpretation in Singapore: Theory and Practice* (Routledge, 2017) and co-editor of *Pluralist Constitutions in Southeast Asia* (Hart, 2019), and *Regulating Religion in Asia: Norms, Modes, and Challenges* (CUP 2019). Her work has been cited by the courts in Singapore and by the Supreme Court of India.

Jaelyn is the Director of NUS' Centre for Asian Legal Studies, and currently serves on the Singapore Law Society's Public and International Law Committee and the Singapore Academy of Law's Law Reform Committee. She is an elected Council Member of International Society for Public Law (ICON-S) and the co-founder of the Singapore Chapter of ICON-S. Jaelyn has held visiting positions at Frankfurt University, University of Münster, University of Trento, Melbourne Law School, the Woodrow Wilson School of Public and International Affairs at Princeton University and the Max Planck Institute for the Study of Religious and Ethnic Diversity. She is also a consultant with WongPartnership, a leading law firm in Singapore.

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Fumito Sato is a Professor of the Graduate School of Law at Nagoya University. He specializes in Russian law, especially in the field of constitutional law. He completed LL.M and was previously a lecturer of the School of Law at Waseda University. He also studied as Visiting Fellow at Moscow State University.

Sato has published articles on such topics as the development of the representative system in the System Transformation period, constitutional adjudication in Russia, and the impact of European human rights protection on the Russian legal order. His research also focuses on the constitutional development in Central Europe, including the history of the constitutional court system in the Austro-Hungarian Dual Monarchy, the Czech Republic, and Hungary.

Aziz Ismatov holds the position of Assistant Professor at the Center for Asian Legal Exchange (CALE) Nagoya University. He completed LL.M and LL.D in International Human Rights Law at the Graduate School of Law at Nagoya University (Japan), and prior to that, he graduated with an

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In his current position, Dr. Ismatov is engaged in legal cooperation, research and education in Asia. Dr. Ismatov's research centers specifically on countries in transition from socialism to a market economy. In his publications (for ex.) "Equal Citizenship, Language, and Ethnicity Dilemmas in the Context of the Post-socialist Legal Reforms in Central Asia." (Palgrave Macmillan, 2020), he focuses on human rights, democracy, and the rule of law dilemmas in the post-socialist command type states. In another recent work, "Constitutional Judiciary's Role in Democratization Process in the Post-Soviet Central Asia. The Constitutional Court in Uzbekistan." *Asian Law Bulletin*, 2020, he ties the emergence of constitutional review institutions in 'new democracies' with a wider international political goals, and discusses how such situation eventually affects constitutionalism.