

THE CONSTITUTION OF BURMA, UNDER JAPANESE OCCUPATION(*)

(Promulgated on August 1, 1943)

THE STATE

1. Burma shall be a fully independent and sovereign state.
2. Burma shall be a co-equal member of the community of sovereign states forming the Greater East Asia Co-prosperity sphere.
3. All powers of Government and all authority legislative, executive and judicial are derived from the people and the same shall be exercised in accordance with the scheme hereunder.

HEAD OF THE STATE

1. Burma shall be ruled over by the Head of the State who shall have full sovereign status and powers.
2. Succession to the Headship of the State before the Constitution comes into operation shall be settled by election, if possible within 30 days after the occurrence of the vacancy, at a joint session of the Cabinet and the Privy Council presided over by the President or Vice-President of the Privy Council or, in the absence of both these persons, by a member of the Privy Council elected by the Privy Council for that purpose.

CABINET OF MINISTERS

1. There shall be a Cabinet of Ministers presided over by the Prime Minister.
2. The Ministers shall be appointed by the Head of the State on the recommendation of the Prime Minister.
3. The Cabinet of Ministers shall conduct the Government of the State in responsibility, both collectively and individually, to the Head of the State.
4. Ministers of the State shall hold office during the pleasure of the Head of the State.
5. The affairs of Government shall be conducted in accordance with the rules and regulations duly made for that purpose.

PRIVY COUNCIL

1. There shall be a Privy Council to advise the Head of the State in such matters of public importance as may be referred to them.

* *Burma during the Japanese Occupation*, Simla, 1944. Text in Burmese, Government Press, Rangoon, 1943.

The following matters shall be referred to the Privy Council: -

(a) Taxation, (b) Annual Budget, (c) National Loans, (d) Ordinary Legislation, (e) Peace Treaties, and such other treaties, conventions and agreements as require ratification before they are ratified.

2. The number of Privy Councillors shall not be less than 20 and not more than 25.
3. The Privy Council shall be an advisory body.
4. The members of the Privy Council shall be appointed by the Head of the State after consultation with the Cabinet of Ministers.
5. The Ministers shall have the right of participation in the sessions of the Privy Council without being members thereof.
6. There shall be a President and a Vice-President elected by the members of the Privy Council.
7. Members of the Privy Council must possess the qualifications of an elderly and experienced politician.
 - (a) The minimum age shall be 40 years.
 - (b) They must have rendered public service or must be competent to represent important interests of the country by virtue of their distinguished educational qualifications and ability.
8. Subject to the approval of the Head of the State the Privy Council shall make rules for regulating its procedure and for the conduct of its business.

LEGISLATION

1. The responsibility for legislation shall belong to the Head of the State who shall ordinarily exercise it after consultation with the Cabinet of Ministers.
2. In the case of ordinary legislation, the Cabinet of Ministers shall, before tendering their advice to the Head of the State, first obtain the views of the Privy Council.
3. However in the case of extra-ordinary legislation the Cabinet of Ministers may act without reference to the Privy Council.

Explanation: - Extra-ordinary legislation shall deal with such matters as maintenance of public safety or prevention of public danger or matters which are as important as matters of life and death due to war conditions.
4. All extra-ordinary legislation restricting civil liberties shall be reviewed as early as practicable after the termination of the war.
5. All the existing laws in force in Burma immediately before the commencement of this scheme shall, so far as it does not conflict with this scheme, continue in force in Burma until altered or amended by competent authority.

FUNDAMENTAL RIGHTS OF BURMESE NATIONALS

1. The liberty of the person shall be inviolable and no Burmese National shall be deprived of his personal liberty except in accordance with law.
2. No Burmese National shall be deprived of his property except in accordance with law.

3. The dwelling of every Burmese National is inviolable and shall not be forcibly entered except in accordance with law.

4. Every Burmese National shall, subject to public order and morality, enjoy freedom of religious belief and practice.

5. Every Burmese National shall, within the limits of law and morality, have the right of free expression of opinion as well as the right to assemble peaceably and without arms and the right to form associations and unions.

JUDICIARY

1. The Supreme Court of Burma now in existence shall continue and shall be the highest Court of Record. It shall consist of a Chief Justice and such number of other Judges as the Head of the State may deem it necessary to appoint.

2. The administration of law and constitution of law courts shall be in accordance with the existing laws.

3. (a) The Chief Justice of the Supreme Court shall be appointed by the Head of the State after consultation with either the Prime Minister or the Minister concerned.

(b) Other Judges shall be appointed by the Head of the State after consultations with either the Prime Minister and the Chief Justice or with the Minister concerned and the Chief Justice.

4. The Judges of Supreme Court shall not be removed except for proved misbehaviour* or for infirmity of mind or body.

Misbehaviour includes misbehaviour towards the State.

5. All Judges shall be independent in the exercise of their judiciary functions and shall be subject only to the laws in force.

6. The decision of the Supreme Court shall in all cases be final and conclusive.

7. Judges and Magistrates shall have jurisdiction over all persons within their territorial jurisdiction regardless of their nationality except –

(a) those who enjoy extraterritoriality under Public International law;

(b) Members of the Burmese armed forces in respect of offences punishable by military courts; and

(c) Members of Allied armed forces in respect of military offences for trial of which provision to the contrary has been made under any treaty or agreement between the Burmese Government and the Nippon Government.

LANGUAGE

Burmese shall be the official language of the new State of Burma.

STATE SERVICES

1. All appointments in the services of the State shall be derived from the Head of the State.

2. There shall be a State Services Board, the Chairman and other members

whereof shall be appointed by the Head of the State after consultation with the Cabinet of Ministers.

3. The Head of the State shall, by regulations made after consultation with the Cabinet of Ministers, determine the number of members of the Board, their tenure of office and their conditions of service.

4. The Board shall be responsible to the Head of the State.

5. The Board shall deal with such matters relating to the State Services as are delegated to them under the rules and regulations duly made for the purpose.

6. The Board shall be independent in the exercise of its proper functions and duties.

7. All Burmese nationals who are in Government or Municipal services on the day of the inauguration of Burmese Independence shall be deemed to have been appointed on the same terms and conditions of service in the New State subject to their taking the oath of allegiance to the New State on a day which is to be fixed for the purpose by the Head of the State soon after the inauguration of Independence.

AUDIT AND ACCOUNTS

1. There shall be an Auditor-General of Burma who shall be appointed by the Head of the State after consultation with either the Prime Minister or the Minister concerned.

2. The conditions of service of the Auditor-General shall be such as may be prescribed by the Head of the State after consultation with the Prime Minister or the Minister concerned, and he shall not be eligible for further office in Burma after he has ceased to hold his office without the approval of the Head of the State.

3. The accounts of the Government of Burma shall be kept in such form as the Auditor-General may, with the approval of the Head of the State, prescribe.

4. The reports of the Auditor-General relating to the accounts of the Government of Burma be submitted to the Head of the State who shall cause them to be laid down before the Cabinet of Ministers and the Privy Council.

ARMED FORCES

1. The Head of the State shall be Supreme Commander-in-Chief of the Burmese Armed Forces.

2. There shall be a War Minister directly responsible to the Head of the State for organisation, administration, and training of the Armed Forces.

3. All commissions in the Burmese Armed Forces shall be granted by the Head of the State on the recommendation of the War Minister.

4. The Supreme Commander shall be advised by the *War Cabinet* in all military affairs. It shall consist of the War Minister, the Chiefs of General Staff concerned, the Vice-Minister for War, the Chief of General Headquarters, Deputy Chiefs of the General Staff, the Director of Military Training and such other members of the Armed Forces as may be added on by the Council. The Prime Minister or any Minister representing him, the Finance Minister and either the

President or the Vice-President of the Privy Council shall have the right to speak in and otherwise the right to take part in the proceedings of the Council without the right to vote.

5. The Chief of the General Staff concerned shall be responsible for the Executive Military Command of his branch of the Armed Forces.

6. The War Minister shall have the power to inspect the General Staff or Staffs and the troops and other forces under their command.

7. (a) With a view to ensuring the stability of the State, the armed forces shall be outside politics.

(b) The War Minister shall be appointed always from among high Military Officers on the active list.

8. The Military Accounts shall be audited by a Special Auditing Board directly under the Head of the State.

CONSTITUENT BODY

1. A Constituent Body shall be convened by the Head of the State, if war conditions permit, not later than one year after the inauguration of Burmese Independence, and in any case not later than one year after termination of the war.

2. The Constituent Body shall be so constituted as to be truly representative of the Burmese people and of its opinion.

3. The Head of the State shall appoint the Members of the Constituent Body and settle all other matters relating thereto in consultation with the Cabinet of Ministers and the Privy Council.

Explanation: - Members of the Burma Independence Preparatory Committee intended that the words 'in consultation' should have a similar meaning to 'after consultation' with the following exception: -

Exception: - The words 'in consultation' convey the meaning 'mutual discussions in agreement for the sake of clarification.'

(Translation doubtful)

4. The Constituent Body shall elect its own Chairman and make rules for the regulation of its business and procedure.

5. The Constituent Body shall determine all matters relating to the Constitution of Independent Burma and in doing this it shall have all the powers and duties of a Constituent Body including the power to institute a referendum on questions relating to the Headship of the State. It shall also be free to act independently of all outside influence.

6. There shall be freedom of speech in the Constituent Body and no member thereof shall be liable to any proceeding in any Court in respect of anything said or any vote given by him in the Body or any Committee thereof and no person shall be so liable in respect of the publication by or under the authority of the Head of the State of any report, paper, votes or proceedings.

7. The Constituent Body shall determine the period within which the Con-

stitution shall come into operation and the rule of the new Head of the State shall commence.

8. The rule of the Head of the State shall terminate with the coming into operation of the Constitution and the tenure of office of all Ministers and the Privy Councillors shall terminate therewith.

9. Burma shall be governed in accordance with this interim Constitution until such time as the Constitution comes into operation.

It can be amended as follows: -

(a) with the approval of the Cabinet of Ministers;

(b) if at a special meeting of the Privy Council attended by at least three-fourths of its members two-thirds of those present at the meeting vote for the amendment.