

ADMINISTRATIVE JUSTICE

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PERAKUAN KEIZINAN

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Fakulti Undang-Undang
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(SARADHA A/P RAMASAMY IYER)

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PREFACE

This paper represents an effort to evaluate the performance and effectiveness of the machinery that handles complaints from the public. The redress of grievances has been the main concern in the face of extensive delegated legislation, State privilege, maladministration and corruption which result in a denial of justice. Despite sustained efforts to provide additional remedies, basic questions about the legal control over the administration remain. Attempts have been made in this paper to suggest improvements and propose reforms towards the betterment of the administration. A number of interviews and statistical surveys have been done.

In an undertaking of this nature, many individuals deserve special merit. There are those however whose contribution to my pursuit have been outstanding. I wish to convey my sincere thanks to my supervisor, Professor M.P.Jain. I wish also to express sincere appreciation to Mr. S.Sivaswamy of the Library, Attorney General's Chambers, Datuk Azizul Rahman bin Abdul Aziz, Setia Usaha, Parlimen, and Mr. S.Thanarajasingam of Wisma Putra and all interviewees. My special gratitude to my father for the innumerable sacrifices that he did in order that I can accomplish my goal. In addition the writer wishes to acknowledge her indebtedness to the Reports by Justice, to a Paper done last year by Mr. Adam Camille Rustum to Sir Guy Powles' recommendations to the Malaysian Government on the issue of Administrative Justice and also to her co-typist

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This Paper is not to be taken as a blue-print for harmony between the citizen and the administration. Indeed it is unrealistic to suggest that any law can protect the citizen from every injustice he claims to have suffered at the hands of the administration.

Nevertheless, there are several avenues open where relations between the government and the governed can be improved. This could result in better quality administration, greater guarantee of fairness in the exercise of power and a better chance of redress for grievances against the administration.

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INTRODUCTION

The activities of the man right from his birth to his death are directed by an incessant desire and search for justice and ceaseless efforts to avoid injustice. Some countries have found consolation in entrenching human rights provisions into their constitutions, others have adopted the Ombudsman System, the Permanent Committee of Enquiry, while others have resolved to allow their inter se relationships to be governed by the 'rule of law'.

Modern exigencies have catalysed the growth of governmental power. This has precipitated into a widespread view that administrative law - the law relating to administration and especially the law governing the relation between the various government agencies and the private citizen - is not only unsatisfactory but manifestly capable of improvement. Balancing this perennial conflict between power of government and liberty of the individual is indeed a delicate task.

In practice, personal liberty, most of us would agree, is threatened much less in broad challenges to basic freedoms than in the detailed and specific acts and omissions which work to the citizens disadvantage and for which he cannot obtain redress.

Bureaucracy in the twentieth century is very much a perjorative term. In a typical bureaucratic set up, one is literally led through a complicated series of passages representing the corridors of government departments. Visitors are generously served with a famous variety of statements. Among them:

(Maaf Cik, boss dah keluar).
Sorry, Miss, the boss has left.

(Cuba datang esok-lah).
Try again tomorrow, please.

(Tuan yang boleh mengambil tindakan maseh bercuti).
The man who can decide this is still on leave.

(Puan perlu satu tanda-tangan lagi).
You need another signature.

This being the problem, what is required then is a reduction in the complexity of procedure and an increase in the number of effective remedies acceptable to the needs of future generations.

An effective, honest and impartial civil service is the spinal cord for the operation of the rule of law. The abuse of administrative power is certainly nonetheless prevalent in our society and is a blot on our democratic form of government. The search for administrative justice is thus a natural concomitant of the development of modern society. This is the sad truth and it must be known to administrators, lawyers and legislators alike if they are to be honest with themselves.