

ADMINISTRATIVE LAW OF MALAYSIA AND SINGAPORE

PROFESSOR M.P. JAIN

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OF
MALAYSIA AND SINGAPORE

By

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With a Foreword by

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FOREWORD

THIS book is most welcome.

Droit administratif was a dirty word to those brought up on Dicey. But the Second World War and its aftermath, have put paid to whatever traces of *laissez-faire* had lingered after the first world war. More and more, Government had stepped in — to regulate the economy to improve the life of the people, and in other ways, especially in our newly independent country. The statute book is full of Acts enabling Government to impinge on the life of the citizen, be he businessman and industrialist or just plain citizen. There are many examples in this book.

As more and more, Government activities impinge on the life of the citizen, more and more, is some independent agency necessary to whom the citizen can appeal for redress against official encroachment; this role has been filled by the courts. And more and more, is it necessary for judges to be active in protecting the citizen if his right has been infringed. The courts not only in England but also in Malaysia have shown a readiness to give him relief — on the principle that Parliament, when enabling Government to do something, does not intend that Government should act unlawfully.

Equally important in our country with a written constitution is the need for courts to curb legislative excesses, for our federal and state legislatures have only powers conferred on each of them by the words of the constitution.

To show that our courts have not failed in their responsibility, there has grown over the years a considerable body of case law, which is scattered in the *Malayan Law Journal* and which it is now convenient to collect in a single volume: this task has been undertaken admirably by Professor M.P. Jain, who has made a special study of this branch of the law — as witness the book he co-authored *Administrative Law in India*, and the innumerable papers he has published.

This book is especially helpful, because in it he deals with cases not only from Malaysia, but also from Singapore, India and England — to point out the principles established and trends in recent development.

— I am delighted to commend this book to judges and lawyers and students — and also to ministers and other politicians, and to civil servants.

Lord President's Chambers,
Kuala Lumpur,
23rd February, 1980.

TUN MOHAMED SUFFIAN

PREFACE

MALAYSIA BECAME independent in 1957 and Singapore became an independent republic in 1965. Since then, Administrative Law has grown in both countries. The courts have made a number of pronouncements having a bearing on Administrative Law. In a number of these cases, courts have shown signs of creativity just as the British or the Indian courts have done. As the state comes to play a more active role in regulating the affairs of the citizens with a view to promote their socio-economic welfare, and as the administration impinges more and more on individual interests, there are bound to arise more and more court cases in Malaysia and Singapore bringing various aspects and problems of Administrative Law into sharp focus. The courts have to play a meaningful role in articulating, expounding and developing norms of administrative behaviour towards the citizens in keeping with law, constitutionalism, democratic values and administrative exigencies.

The purpose of this book is to explain the principles of Administrative Law as they apply in Malaysia and Singapore. This book seeks to bring together the court pronouncements in these countries in the area of Administrative Law and extract relevant principles therefrom. As it is difficult to find as yet local decisions on all major points in this area, it becomes necessary to make references to decisions from other common law jurisdictions. Accordingly, references have been made to the U.S.A. and other Commonwealth countries, particularly, to Great Britain, Australia and India. Some references have also been made to New Zealand and the *droit administratif* in France, the elements of which are slowly infiltrating into the common-law system. The approach adopted in this book is expository, analytical, comparative, and, at times, somewhat critical.

The author has been fortunate in being able to study the Administrative Law in Malaysia and Singapore and to complete this book. The author is very grateful to the Universities of Malaya and Singapore for providing him with the opportunity of teaching Administrative Law to the LL.B students and, consequently, to study the system and to undertake this work: he is also thankful to a number of friends and colleagues for their constant help and encouragement in this enterprise. To mention only a few of them here: Prof. Ahmad Ibrahim, Dean, Faculty of Law, University of Malaya; Prof. S. Jayakumar, Dean, Faculty of Law, University of Singapore; Associate Professor Nik Abdul Rashid, Deputy Dean, Faculty of Law, University of Malaya, and Puan Sheikh Zakaria, Law Librarian. The author is also thankful to Encik Amir Mallal and Encik Al-Mansor Adabi, both of the *Malayan Law Journal*, for their help and co-operation in publishing this book.

Above all, the author is grateful to Honourable Tun Mohamed Suffian, Lord President of the Federal Court, Malaysia, for kindly contributing a foreword to this book.

It is the hope of the author that this book will be found useful by students of Administrative Law in these countries as well as by administrators, lawyers, judges and the members of the public who have to deal with the administration from time to time.

Kuala Lumpur
February 4, 1980.

M.P. JAIN

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