

THE EXTENT OF JUDICIAL REVIEW OF  
ADMINISTRATIVE DECISION AND ORDERS  
OF THE INDUSTRIAL COURT — THE  
EFFECTIVENESS OF THE OUSTER CLAUSES  
UNDER THE TRADE UNION ACT 1959  
( REVISED ) 1981, AND INDUSTRIAL  
RELATION ACT 1967.

by

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## CHAPTER : 1

### 1. Introduction.

The system of delegated subordinate or subsidiary legislation has come in vogue in all democratic countries. One of the factors which contributed to the growth of delegated legislation in democratic countries is that modern country discharges multifarious functions, It also helps to discharge undue burden of the legislature and to economise the legislative time. Such a system introduces flexibility. As Wade and Phillips points out, subsidiary or delegated legislation fulfills the need of modern times "that something less cumbersome and more expeditious than an Act of Parliament shall be available to amplify the main provisions, to meet the unforeseen contingencies and to facilitate adjustment that may be called for after the scheme has been put into operation."<sup>1</sup> Therefore , such a system can be regarded as useful and indispensable technique of modern government.

Malaysia is no exception in so far as it relates to the growth in subsidiary legislation. In

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<sup>1</sup>. Wade and Phillip. Constitutional Law, seventh edition London: Longmans, September 1965.

constitutional theory the law making function essentially belongs to the Parliament. However with the growth in a number of laws Parliament has to entrust some of its legislative powers to its subordinate or its administrative agency. There exist no restriction on parliament to confer its law making power on anyone and to any extent as it pleases.

Thus Parliament must ensure that its agency properly carries out the power entrusted to it. This is done through adjudication and is established outside the judicial system which decides questions of fact as well as of law and determine a variety of claims, controversies and disputes between individuals.

This applies to Industrial law as well. The adjudicatory body is established by the Industrial Relations Act which provides for the establishment of the Industrial Court. The Industrial Relation Act 1967 is generally enacted for the purpose of promoting the country's wealth and to create a healthy investment climate. In order to achieve this, all disputes can be ultimately resolved by the Industrial Court. The Minister of labour has also been conferred with adjudicatory function under certain circumstances as provided under the Industrial Relation Act 1967 and the Trade Union Act 1959.

The Trade Union Act 1959 mainly relates to the registration of trade unions. This allows the government to control such activities by a society so as to create an organisation of employees and employers and thereby maintain the balance of power between labour and capital. This is to encourage mutual respect and willingness to consult each other before any decisions are made. Though the adjudicatory established outside the judicial system but it is still subject to be interfered and reviewed by the judiciary so as to administer justice. This has been largely considered as a last resort to obtain justice. Therefore any infringement of laws by the administration either in the capacity as adjudicatory bodies i.e in adjudicating disputes or in the capacity as administrator in exercising its wide discretionary, the Industrial Court and the Minister can still be reviewed by the judiciary. This is widely known as the law on "Judicial Review".

The question is what action amounts to Judicial Review and how far has it affected in so far as administrative decision and the orders of the Industrial Court is respectively concerned. What is actually the function of judicial review in this aspect? Judicial Review in this aspect is only on the Judicial roles and not of the decision itself. Thus judicial review is