



him; and above all, the members of the Bar and Bench may question the authority of its exposition at places. But this is the price the author had to pay for covering in one volume of this size such major areas catering to so varying needs. Nevertheless, the book must be welcome to a student because he can get from it all he needs to know about the subject; to a law teacher, a lawyer and a judge because it provides provocative, stimulating and profound materials for a specialist study in a field in which paucity of useful literature has so far impeded development in this country. A comparative rarity with foreign-source materials discussed in Indian setting, the book impresses us with its freshness, expertise and wealth of information. No doubt it provides to the Indian reader an indispensable guide focussing attention on the problems of administrative justice, whether, when and how much to review, as suggested by Davis.⁸⁶ The author has admirably succeeded in his thesis that administrative law is no longer the mysterious Sphinx or the cult of despots, that within the widening scope of judicial review it is the only answer to administrative lawlessness which is otherwise inevitable with the expansion of governmental powers in a welfare state. The criticism directed above is, therefore, not intended to diminish the utility of the book as a pioneering enterprise by an Indian author, it is on the other hand, meant to attract the attention of the author in subsequent editions of which the reviewer hopes, there will be many. Fresh thinking, rigorous editing, selected bibliography and publisher's blurb will no doubt make this book a standard work on the subject.

*B.P. Bhatnagar**

JUDICIAL CONTROL OF ADMINISTRATIVE ACTION IN INDIA AND PAKISTAN. By M. A. Fazal, M.A., LL.B. (Dac.), D. Phil. (Oxon.). London: Oxford University Press. 1969. Pp. xxxv-345. 80s.

THE BOOK can be better titled as "Judicial Control of Administrative Action in England, India and Pakistan" since it contains a detailed discussion of the subject in relation to England as well. There are occasional references to the law of the United States. It is not an easy matter to contain and collate the law of three countries in 345 pages which the book has, but the author has admirably achieved this task. The other praiseworthy features of the book are that it is well and concisely written and has an excellent get-up.

86. 3 Davis, Kenneth Culp *Administrative Law Treatise* 388-389 (1958).

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After 1947 there has been a sudden metamorphosis from the *laissez faire* to the welfare state so much so that the material on administrative law has not kept pace with it. It is only during the last few years or so that the importance of administrative law as a subject of study has been recognized and it has found a place in the curriculum of the LL.B. degree of several Indian universities. There has been a dearth of good material on the subject and, therefore, Fazal's book is to be heartily welcomed. However, it is priced at 80s. which will be a positive discouragement for the Indian reader to purchase it.

The book contains the following six chapters : (1) Introductory. (2) The Jurisdictional Principle. (3) Review of Fact and Law. (4) Natural Justice. (5) Remedies. (6) Conclusion. The book also contains an index and a detailed bibliography.

The book excels in the analysis of the jurisdictional doctrine. The author rightly concludes :

The arbitrary employment of the jurisdictional doctrine in cases involving identical questions of law and fact has further erased the distinction between jurisdictional and non-jurisdictional matters in India and Pakistan.¹

This is but one step short of saying that since it is hard to draw a line between the two types of errors, the court should review all errors of law irrespective of the question whether they are jurisdictional or not.

A book which tries to compress the law of judicial control of administrative action of the three countries in slightly over 300 pages is likely to suffer from certain limitations. The book lacks adequate treatment of certain important branches of the law. Judicial Control of *administrative discretion* which is an all pervading phenomenon today hardly gets any treatment in the book. Only a few pages are devoted to this important subject. This is a major weakness of the book. The book also does not deal with the procedural aspects of the writs like exhaustion of remedies, laches and so on.

The reviewer has come across several statements in the book which appear to be ambiguous or do not represent the true state of the law. For example, the author states that "the doctrine of 'jurisdictional fact' provides the main plank on which rests the superior courts' power to examine the factual basis of administrative determinations."² This gives an impression to the reader that other types of facts are not reviewable by the courts, till he reaches page 120 where the following statement appears :

Although the Indian and Pakistani courts have generally refused to review facts other than collateral facts, absence of evidence has always

1. Fazal, *Judicial Control of Administrative Action in India and Pakistan* 65 (1969). Hereinafter referred to as *Fazal*.

2. *Id.* at 102-03.



been recognized as sufficient justification for interfering with the finding of facts even when they are within the jurisdiction of the tribunals.

There is not the least doubt that the author is correct when he means to say that both jurisdictional and non-jurisdictional facts are reviewable in India by the courts but the author does not care to point out whether there is any difference in the scope of judicial review over the two types of facts. As far as facts within jurisdiction are concerned the courts do apply the "no legal evidence theory" but with regard to the jurisdictional facts it has been stated by the Indian Supreme Court that such facts can be reviewed by the Court in its independent judgment.³

There is a good discussion on error of law which appears on the face of record. Not only has the author discussed the present position but also gone into the history of the law. The author comments that

the position in Indian law is that if on a question of law two opinions are possible...and the inferior tribunal has adopted one of the two possible views' its decision does not disclose an error of law apparent on the face of the record.⁴

The author cites a High Court decision in support of this proposition. There are a number of Supreme Court cases on this point which could have been cited.⁵

With regard to giving reason by quasi-judicial bodies the author states :

This line of thought has, however, failed to fructify, so that by designating an authority judicial or quasi-judicial it is not possible to demand reasons for a decision from them as a matter of obligations.⁶

This was old law but after 1965-66 a series of cases can be found where the judiciary in India has insisted on giving reasons by the quasi-judicial bodies.⁷

Chapter IV contains an excellent analysis of the principles of natural justice. The author rightly states :

The distinction between the judicial or quasi-judicial acts, on the one hand, and administrative acts, on the other, which by its very nature cannot but be arbitrary, has turned the Indian Law on the subject into a game of chance from which it is impossible to predict anything.⁸

3. For instance, *Raja Anand v. State of U.P.*, A.I.R. 1968 S.C. 1080.

4. *Fazal* at 139.

5. For example, *Collector of Customs v. Ganga Setty*, A.I.R. 1963 S.C. 1319.

6. *Fazal* at 140.

7. For example, *Bhagat Raja v. Union of India*, A.I.R. 1967 S.C. 1606; *Govind Rao v. Madhya Pradesh*, A.I.R. 1965 S.C. 1222.

8. *Fazal* at 217.



However, it is not possible to agree with the observation of the author that the House of Lords' decision in *Ridge v. Baldwin*⁹ has not influenced the course of law in India. After this decision a number of cases can be found in which the Supreme Court has held the function to be quasi-judicial, thus depicting a new trend;¹⁰ the Supreme Court of India has cited the *Baldwin* case with approval in several cases.¹¹ The case of *Sadhu Singh v. Delhi Administration*¹² which the author cites in support of his proposition is partly overruled by *P. Laxmanpal v. Union of India*¹³ where the Supreme Court held that the review function of the detaining authority was quasi-judicial even though the initial decision of the detention may be administrative. The reason for omission of the case appears to be that the author's work, as stated by him in the preface of the book, is limited to material available in the Bodleian Law Library, Oxford till September 1967, and the case was reported subsequently.

In spite of some of the deficiencies in the book mentioned above, the book, on the whole, is a substantial contribution to the subject of administrative law.

S. N. Jain*

THE CIVIL SERVICE IN A DEVELOPING SOCIETY. By A. R. Tyagi.
Delhi : Sterling Publishers (P.) Ltd. 1969. Pp. XVI+426 (with
appendices and index). Rs. 35.

THIS BOOK has enabled the author to earn his degree of Doctor of Philosophy. It is an out-standing research work on a burning problem of the day. The book is divided into nine chapters, namely, (1) Introductory—The Historical Perspective (2) Introductory—The Role today : (3) Structure and Role of the Civil Service; (4) Recruitment; (5) Training; (6) Terms of Employment; (7) Staff Associations and Relations; (8) Professional Standards and finally—Conclusion followed by appendices and index. The absence of a comprehensive bibliography is a glaring omission.

In the first chapter the author has devoted fifty-four pages in narrating the history of the civil service during the British rule in India with

9. [1964] A.C. 40.

10. See the cases cited in S. N. Jain, "Some Recent Developments in Administrative Law in India," 10 *J.I.L.I.* 513 (1968).

11. See, for instance, *Shri Bhagwan v. Ram Chand*, A.I.R. 1965 S.C. 1767; *Associated Cement Co. v. P. N. Sharma*, A.I.R. 1965 S.C. 1595; *Boal Chand v. Chancellor, Kurukshetra University*, A.I.R. 1968 S.C. 292; *Calcutta Dock Labour Board v. Jaffar Imam*, A.I.R. 1966 S.C. 282.

12. *Fazal* at 220.

13. A.I.R. 1967 S.C. 1507.

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