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LEGAL AID

(TOWARDS AN UNDERSTANDING OF OUR LEGAL RIGHTS)

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INTRODUCTION

Institutionalised legal aid can only be useful to those who have the ability to realise that their problems are legal problems.

The main problem faced by the masses in this country, particularly those from the rural areas is very seldom the question of where to get legal aid and assistance, or where the office of the nearest Legal Aid Bureau is situated. Rather the main question asked by us is what rights do we have that would entitle us to legal redress, be it via the Legal Aid Bureau or other bodies? The general consensus amongst most of us seems to be that we do not have any actual legal problems. If this represents the truth, it is indeed most encouraging. However, it is my personal belief and contention that this is a completely false picture of the whole situation - a picture which results from our own ignorance as to our legal rights. Since we do not know what legal rights we have, we will never realise when these rights are infringed by others. And hence we conclude by painting the rosy picture that we have no legal problems. This basic ignorance as to our own legal rights have made us push aside all forms of legal aid and assistance as being irrelevant to us in our daily lives. Hence the greatest stumbling block that prevents us from positively asserting our legal rights is our own ignorance of the law, which have become our way of life.

Using the above belief and contention as a backdrop, I shall focus the remaining of the discussion on the following issues:-

- (1) The importance of knowing our legal rights.
- (2) The methods of identifying our rights.
- (3) The assertion of these rights and the means of getting redress via the existing institutions.

THE IMPORTANCE OF KNOWING OUR LEGAL RIGHTS

An American writer has rightly observed that a society which does not know of its rights does not differ from a society with no rights at all. This is true for the mere possession of any commodity, will not benefit the possessor if the possessor is not aware of its existence. The commodity might not be used even at a time when it could have been most beneficial to the possessor. After all we have to realise that development does not merely mean the increase in the number of Legal Aid Offices but development means an increase in our knowledge as to our own legal rights.

A society whose members are ignorant of their rights cannot function effectively. For example, in our country, we have the Rukunegara for us to uphold as a way of life. Among the five principles of the Rukunegara are upholding the Constitution and the Rule of Law. These principles will remain as mere principles for as long as we continue to be ignorant of our rights as provided by the Constitution and other legislations. Without an attempt to familiarise ourselves with the Constitution and the other laws that affect us we cannot abide by the principles of Rukunegara.

Being part of the human race and being a member of our society we owe certain duties and obligations to other members of the society. We should not merely be sensitive to and sympathise with, the problems of the under privileged in our society. Rather we should make positive efforts to improve the quality of life of the downtrodden, the ignorant the handicapped and the weak. However, for as long as we, the more privileged members of the society do not know our own rights we can never effectively fight for these people. As such therefore we would have failed to play a very vital role as a member of the society and this failure means that we have failed in what should be one of the prime goals of our lives, to bring light to those in darkness, to awake those who are asleep and to teach the ignorant.

In developing countries like ours the law must be constantly adapted to the social changes that is continuously taking place in our

society. As members of the society, not all of us might be fortunate enough to participate directly in the processes of law making. However, we can still play our role by indirectly influencing the course which a particular law is going to take, by being sensitive to what is going on around us. Any particular piece of legislation which does not take into account the needs of the society would have failed as an effective instrument of social change. This usually results in the passing of laws by the Malaysian Parliament which are copied wholesale from the laws of England or India. In such a situation, the fault lies not merely in the legislative body of the country or in the members of Parliament, rather the fault partly lies on us, as members of the society. The law should represent our aims and aspirations or the aims and aspirations of the majority group. But if we ourselves do not bother to familiarise ourselves with these laws and with the circumstance leading to their birth, we will not be able to effectively represent to the powers that be our own views on any particular legislation.

We as women, for instance, play a very important role as consumers in our society, purchasing all kinds of goods daily. Sometimes we buy the bigger and more expensive goods on hire purchase. But let us ask ourselves, how many of us are actually aware of the existence of the Hire Purchase Act 1967 which regulates the purchase of certain goods on hire purchases? Even if we do know of the existence of such an Act, are we aware of the fact that till today, the Act only protects four types of goods? i.e. refrigerators and all types of freezers, sewing machines, motor vehicles, radio including television and other similar equipment.¹ Any other goods that we buy on Hire Purchase are not protected by this Act. Hence whatever agreements that we enter into for the hire purchase of other goods are subject only to the general principles of freedom to contract and the Contracts Act 1950. Why is it that the Hire Purchase Act 1967 protects only these

¹See first schedule to Hire Purchase Act 1967.

four categories of goods, while there are other goods often brought on hire purchase terms such as washing machines and household furniture? Why does not the Act protect us in all types of hire-purchase transactions, irrespective of the nature of the goods bought? When the Hire Purchase Bill was first introduced in Parliament, the Minister concerned explained that the four categories of goods were included only for the trial period of the Act, and he promised that the list will be constantly updated. Today the age/Hire Purchase Act is already in its mid-teens but the list of goods covered by the Act has never been updated. Once again we are partly responsible for the unsatisfactory state of affairs. We as the ordinary consumers who frequently buy goods on Hire Purchase terms have to persuade the government to increase the number of goods protected by the said Act. We cannot rely solely on the parliamentarians to do so and we too cannot blame them solely for being insensitive to such needs because they might never have bought anything on Hire Purchase throughout their lives.

The position is the same with the other laws which we find unsatisfactory. It is our duty to represent our dissatisfactions to the government through channels such as voluntary organisations and similar bodies. Again this can only be done, if we first sensitise ourselves to the laws that affect our daily lives.

THE METHODS OF IDENTIFYING OUR RIGHTS

The law is neither a myth nor a fiction. Neither is it a mere shadow that can be seen at distance but cannot be touched and known by mere mortals. Rather the law is a reality, and except for those laws with religious or divine origins, laws are generally the creation of man for man. Knowing and identifying the laws that one way or another affect our daily lives is not an impossibility for those without legal training. This is the most important thing that we all have to realise - for until and unless we remove the false impression which most of us have that those without the necessary legal skills and

expertise do not have the capacity to understand the laws, we will never be able to free ourselves from passive and negative views about the law. The law should be treated as a friend that will help us in times of difficulty and dilemma and not as a foe. Only then we will have the interest and the initiative to understand the laws better.

How then can we, as members of society, from various walks of life with different background and educational standing recognise our legal rights? Or the more pessimistic among us will ask: Is it possible for us, as laymen to explore the 'mysteries', of the law in search of our rights?

My response is we can easily do so by identifying the various roles that we play in society - our role as an individual, as a consumer, as an employee and as a wife and mother. Some of us might play all the above roles daily while others might only play the first two roles. The number of roles that we play in society is not important rather what is more important is for us to realise that each and every role that we play brings with it certain legal rights.

A. AS AN INDIVIDUAL

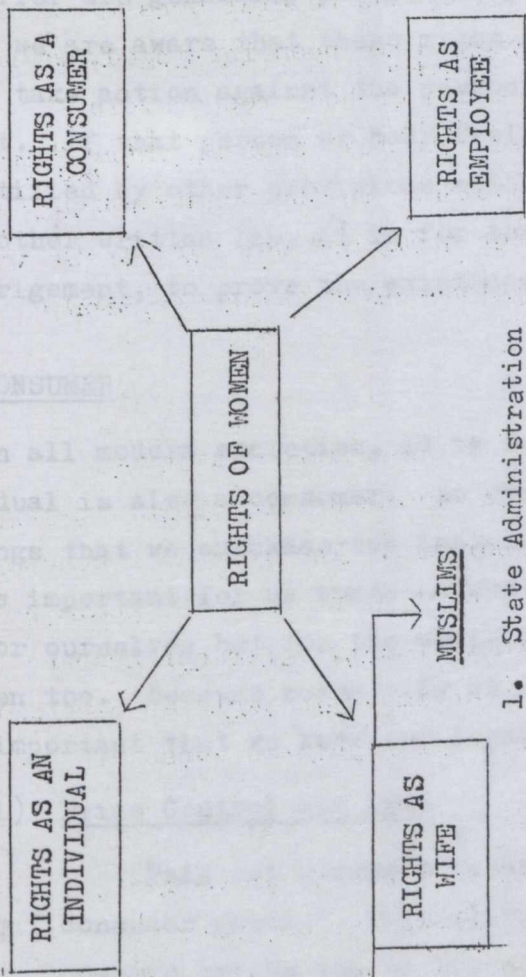
This is the most important role played by every member of the society - be he a man or a woman. Like man, every woman is a unit in society. Every individual in a society, be he a man or a woman has certain basic rights which cannot be infringed by others. As citizens of Malaysia, our fundamental or basic rights are enshrined in the Federal Constitution. The following are our individual rights as protected by the Constitution.

- (i) Article 5 - A person cannot be denied of his life or liberty except in accordance with the law. A person who is arrested must be informed of the grounds of the arrest as soon as may be and he too should be allowed to contact a lawyer of his choice.

- (ii) Article 6 - A person cannot be made a slave or be forced to work except in certain circumstance as allowed by the Parliament.
- (iii) Article 7 - A person cannot be punished for an act if at the time it was committed, the act was not an offence.
- (iv) Article 8 - All persons are equal before the law and are entitled to equal protection of the law.
- (v) Article 9 - A citizen cannot be banished or be prevented from moving freely within the Federation.
- (vi) Article 10 - A person is free to speak, assemble and to form association.
- (vii) Article 11 - A person is free to practice the religion of his choice.
- (viii) Article 12 - Every body has an equal right to educational opportunities.
- (ix) Article 13 - A person has a right over his property and should it be compulsorily acquired, he is entitled to adequate compensation.
- (x) Article 119 - Every citizen who has reached the age of twenty-one has a right to vote in elections.

The above list is far from complete but an attempt has been made to outline the more basic and important individual rights. It must be emphasised that although the above rights are enshrined in the Federal Constitution, there are other provisions either in the Constitution itself or elsewhere in other written laws enabling certain authorities to take actions which might seem to contradict the above basic individual rights. As an example, although Article 8 of the

LEGAL RIGHTS OF WOMEN ACCORDING TO THE ROLE THEY PLAY



1. Federal Constitution

NON MUSLIMS

1. Civil Marriage Ordinance 1956
2. Divorce Ordinance, 1952
3. Married Women Ordinance, 1957
4. Married Women and Children Maintenance Ordinance, 1950
5. *Law Reform (Marriage and Divorce) Act, 1976.

RIGHTS AS MOTHER

MUSLIMS

1. State Administration of Muslim Law Enactments.

1. Prince Control Act 1946 (Revised 1973)

2. Control of Supplies Act 1961 (Revised 1973)

3. Hire Purchase Act 1967 (Revised 1978)

4. Trade Description Act 1972

5. State Enactments On Weights and Measure.

1. Employment Ordinance 1956

* yet to be enforced

Federal Constitution provides that every person is equal before the law, Article 153 of the Constitution enables the Yang Di Pertuan Agong to take certain steps to protect the special position of the Malays and the Natives of Sabah dan Sarawak such as by reserving a certain number of posts in the government or reserving scholarships for them.

However, the exceptions to the list of basic rights is not of extreme importance to us as laymen trying to understand our rights. What is more important is for us to realise that the rights listed earlier are generally protected by the Federal Constitution. As soon as we are aware that these right have been infringed, we have a right to take action against the person or body responsible for the infringement. If that person or body feels that such an infringement can be justified by other provisions either in the Constitution itself or in any other written law, it is for them, and not for us, the victim of the infringement, to prove the existence of such an exception.

B. AS A CONSUMER

In all modern societies, it is inevitable that every individual is also a consumer. As our needs increases, the number of things that we purchase too increase. The role as a consumer is more important for us women as most of us purchase goods not only for ourselves but for the whole family - for our husband and children too. Because women play an important role as consumers, it is important that we know our legal rights as consumers too.

(i) Price Control Act 1945

This Act requires retailers to price tag all consumer goods.² This allows the consumer to compare prices and to buy at the lowest possible price. This protects our rights as consumers to make our own choice and to purchase at the most

² Price Control (Indicating Price by Retailers) Order 1977.

competitive prices. Apart from that all pre-packed goods for sale are required to be labelled with the name and address of manufacturer, importer, minimum weights, quality, amount, capacity etc.³ This protects our right to get the right information about the goods we purchase.

(ii) Control of supplies Act 1961

This Act controls the supplies of essential commodities such as sugar, cement etc.

(iii) Trade Rescription Act 1972

This Act protects our right to proper and adequate information on goods offered for sale e.g. A specific definition is given to the word 'Halal'.⁴

(iv) Hire Purchase Act 1967

This Act protects our rights in hire purchase transactions for certain specified items i.e. motor vehicles, sewing machines, radio and television equipment and refrigerator. A breach of some of the provisions of this Act is an offence punishable by a fine.

(v) States Weight and Measure Enactments

These enactments are found in all the states in Malaysia and they protect our rights as consumers to get the correct weight or measure for any item purchased.

C. AS AN EMPLOYEE

The main Ordinance giving rights to employees generally

³Price Control (labelling by Manufacturers, Importers Producers or Wholesalers) Order 1980.

⁴Trade Description (use of expression Halal) Order 1975.

and to women employees specifically is the Employment Ordinance 1955. Apart from the rights of employees generally, this Ordinance also protects specifically rights of women employees. The following are two categories of the provisions in the Ordinance protecting the special interests of women employees:-

(i) General Rights of Female Employees

S. 34(1) of the Ordinance provides that except in accordance with certain regulations no female employee shall work in any industrial or agricultural undertaking between the hours of 10.00 p.m. in the evening and 5.00 a.m. in the morning nor commence work for the day without having had a period of 11 consecutive hours free from such work.

S. 35 provides that no female employee shall be employed in any underground work.

(ii) Maternity Protection for Female Employees

S. 37(1)(a) provides that a female employee shall be entitled to maternity leave for a period not exceeding 60 consecutive days in respect of each confinement and shall be entitled to receive from the employer a maternity allowance during this period if at the time of the confinement, she has less than 3 children.

According to S. 39, if a female employee, after giving notice to her employer that she expects to be confined, commences her maternity leave and dies from any cause during that period, her employer who would have, but for her death been liable to pay any maternity allowance shall pay to the person nominated by her or to her legal representative, an allowance calculated from the day she commenced her maternity leave to the day immediately proceeding her death.

S. 40(3) provides that an employer who dismisses a female employee from her employment during the period in which she is entitled to maternity leave shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$2,000/-.

Should there be any condition in the contract of service whereby a female employee relinquishes any of the above rights relating to her maternity protection, such condition shall be void and of no effect - S. 43.

D. AS A WIFE AND MOTHER

The rights of Malaysian women in their role as a wife and a mother, be it for the Muslim or for the non-Muslims have been adequately considered in the other sessions of this Seminar and hence will not be considered here.

THE ASSERTION OF THESE RIGHTS AND THE MEANS OF GETTING REDRESS

The understanding of our own rights is only the first step towards legal self reliance. Having realised and understood our rights there are further hurdles for us to cross in order to be able to assert these rights and obtain redress in cases of infringement.

Having identified our legal rights, we will automatically be able to recognise whether a particular problem that we face is a legal one or not. What is most important for us to remember at this stage is that for every infringement of our legal rights we are entitled to some form of redress.

We have also at this juncture to be aware of all the existing machinery that will enable us to get the necessary legal guidance and assistance, either for a fee or for free. For a fee, which in most cases is exorbitant, the services of a private practitioner can be obtained. But this is a luxury which most of us cannot afford.

THE PROCESS OF ASSERTING OUR LEGAL RIGHTS

Knowledge of one's own legal rights

The recognition of a legal problem

An awareness as to the existence of institutions providing legal aid and assistance

The ability to overcome the practical barriers in utilising available resources

The ability to overcome the psychological barriers in utilising available resources

Legal redress through the Legal Aid Bureau and other organisations or private practitioners.

Sound financial standing to obtain the services of private lawyers.

Hence I am... more relevant... lawyers' fees... free legal aid... offices in all... aid to those whose... the most... poor, who... rich who will... but those who... test used by... afford the... of the average... region. The... means test... entitled to... Peninsular Malaysia... of Malaysia... legal aid... these are... suggest... freedom to... legal problem... employment... he can... one relating... to go to... might be... refer him... small fee... enhance... in most... can be obtained...

See paper by Moor Parida Griffin on the Legal Aid Bureau.

Hence I am more interested today to consider an area which will be more relevant to us, to the masses who cannot afford to pay the lawyers' fees. In Malaysia, a government department that provides free legal aid and assistance is the Legal Aid Bureau,⁵ which has offices in all the states. The legal aid bureau provides free legal aid to those whose disposable income is below a fixed amount. Thus, the most unfortunate group of people in this country is not the very poor, who would obviously be entitled to free legal aid, nor the very rich who will be able to afford the services of a private practitioner but those who are too 'rich' to be poor in the light of the means test used by the Legal Aid Bureau but are too 'poor' to be able to afford the exorbitant fees of a private lawyer. Unfortunately, most of the average people in this country fall within this penumbra region. The Legal Aid Bureau itself hopes to be able to improve the means test soon so that more people from this penumbra region will be entitled to free legal aid. Apart from them the Bar Council of Peninsular Malaysia together with The Faculty of Law of the University of Malaya is also planning to set up a Legal Aid Clinic to provide legal aid and assistance to this group of people. But at present these are both mere plans and for the time being and perhaps for some years to come, there are few avenues for these people from the penumbra region to get free or partially free legal aid and assistance. If the legal problem faced by such an individual is one relating to his employment, and if he is a member of a particular trade Union, perhaps he can get legal assistance through his unions. If the problem is not one relating to employment but to other domestic matters he is advised to go to the Legal Aid Bureau anyway. Perhaps in special cases he might be able to persuade the officer concerned to take his case or to refer him to a private practitioner who will do his case for a very small fee.

An individual who has identified his problem as a legal one, and who is aware of the existing avenues for getting legal assistance

⁵ See paper by Noor Farida Ariffin on the Legal Aid Bureau.

might still decide not to take any action and hence decide not to take his problem either to the private practitioner, the Legal Aid Bureau or other organisations.

The individual with a legal problem at this state is faced with two types of barriers i.e. (i) The Practical barriers (ii) The Psychological barriers.

(i) Practical Barriers

(a) Geography - The offices of the Legal Aid Bureau are found only in the capital towns while 3/4 of our people live in the rural areas. For the poor, a trip to the town in search of legal aid is an expensive outing. An attempt to increase the number of offices in the less urban areas should be a challenge which the Legal Aid Bureau should seriously consider. Similarly, other organisations intending to give free or partially free legal assistance should take this into consideration.

(b) Working hours - The Legal Aid Bureau, being part of the government machinery follows the working hours of other government offices - 8.00 a.m. to 4.15 p.m. (lunch break from 12.45 p.m. - 2.00 p.m.) for five days a week and from 8.00 a.m. to 12.45 p.m. on the sixth day. For an office providing services to the poorer members of the public these restrictive hours are highly inappropriate. For those who are working, they will have to take a day's leave to go to the nearest town where the office of the Legal Aid Bureau is situated. For those who are paid on a daily basis, a day's earnings is lost. Those who are not working might have problems in leaving behind

their young kids during office hours because the other members of the family might be at school or at work. This is an unsatisfactory state of affairs. Perhaps one day in the not too distant future there will at least be one officer in every office of the Legal Aid Bureau working after the normal office hours on certain days of the week - perhaps until 8.00 or 10.00 in the evenings. If other voluntary organisations which do not receive government funding such as the Befrienders and Alcoholics Anonymous, which provide advisory services to the public can be contacted at all times be it in the day or at night, surely it is not impossible for a government department to do likewise.

(ii) The Psychological Barriers

(a) Our general negative attitude that any involvement in any legal conflict is bad and embarrassing. We regard all forms of legal aid and assistance as bitter doses of medicine to be taken only when we are sick and not as vitamins to improve our health and to prevent diseases. We also fear the publicity that sometimes results from a legal action. Apart from this, if the other party happens to have greater power and authority such as the government, the police or the employer, we usually have the false conception that the law tends to be in favour of the more powerful of any two parties involved in a legal conflict.

(b) Apart from our own natural attitudes resulting in the above psychological deterrence, another psychological barrier exists in the form of the environment of the offices from which we are to seek legal assistance. The office of the Legal Aid Bureau for the Federal

Territory and Selangor for instance, is on the 5th Floor of the prestigious Bank Rakyat Building situated right in the heart of Kuala Lumpur. The Legal Aid Bureau office in Penang is situated in the same building as the Courts. These are all alienating factors for the poor folk from out of town.

Both the practical as well as the psychological barriers cannot be overcome without the cooperation of both parties - those providing aid as well as those receiving aid. If both these parties can understand and appreciate the problems faced by the other, perhaps the relationship between the giver and the given can be further strengthened. Both parties should regard these barriers as a common enemy against whom they must jointly fight to enable every individual to effectively uphold his legal rights.

Not all legal problems need necessarily be resolved through a private practitioner or a legal officer from the Legal Aid Bureau. Sometimes there may be other more effective means to resolve such problems in certain situations.

One good step which can be taken when your legal right has been infringed by others is to give as much publicity to it as possible through the newspapers. This is most effective if the infringement is caused by or involves a government department or other statutory bodies. A common example is when you have made a particular payment but this is denied by the department or body concerned. You can write a letter to any of the newspapers with all the relevant details. Such a letter will generally be published and the particular department concerned will usually respond by another letter published in the same newspaper saying that investigations are being carried out on the matter. If no further action is taken after that response in the newspaper you should then go personally to the person who has responded to you in the newspapers on behalf of that particular department. He is usually the Public Relations Officer of that department.

Again if your grievance is against a government department, you can also make a complaint to the Public Complaints Bureau - a government department which is supposed to receive complaints from the public about any government department. If there is no such office near your place, the complaint can be submitted to your Member of Parliament or the Headmasters of nearby schools, whose duty it is to forward this complaint to the Bureau. At present, the Bureau does not receive many complaints from the public particularly from those in the rural areas. This may be due to the lack of publicity given to the Bureau and to the understandable reluctance of the public to make a complaint about one government department to another government department.

Consumer Associations which now exist in most states and also at the Federal level are effective channels for consumer grievances. It is of utmost importance for us to know and identify the activities of the Consumer Association in our state so that should our rights as a consumer be infringed we can easily contact them.

The last but by no means least, effective method of channeling a grievance, which is more aggressive in nature, is to bring your complaint or grievance personally to the authorities which had resulted in the grievance. If a salesman in a shop or an officer in any private or public office has done something to you which you feel is wrong then you should make an effort to see his superior and make a complaint. This is not a popular method here and this maybe due to our traditional eastern way of life. However, there are times when only such an aggressive method can be effective. In making a direct complaint, the following guidelines are essential:-

- (i) Make your complaint as soon as possible and take it as high as possible;
- (ii) Take the name and office of anyone you deal with for future reference;

(iii) Write letters rather than make a telephone call.

You cannot be flustered or put off in a letter, you can make all your points clearly and you will often get a written reply which can prove useful later on;

(iv) If you are still getting nowhere, contact organisations or bodies outside that particular one, such as the Public Complaints Bureau, the Legal Aid Bureau, newspapers, Consumer Associations etc. and make further complaints.

CONCLUSION

This Seminar paper has not been written with the wrong and impossible purpose of making lawyers having all legal skills out of each and everyone who reads it. Rather it is intended to widen the knowledge of the laymen as to their legal rights.

In these times and age nothing can be obtained freely or cheaply. But among the many expensive and valuable items that we might possess, nothing is more expensive and more valuable than our own legal rights. If we realise this fact, we should properly and carefully safeguard and treasure it like we do to all persons and things we love.