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RIGHTS OF AN ARRESTED PERSON

BY

NOR'AIN BINTI MOHAMAD NASIR  
83595823

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## CONTENTS

	<u>page</u>
Preface	(i)
Acknowledgements	(iii)
Table of Cases	(vi)
Table of Statutes	(viii)
 <u>Chapter I: Introduction</u>	
1.1 Introduction	1
 <u>Chapter II: Arrest</u>	
2.1 Definition of arrest	13
2.2 Types of arrest	14
2.2.1 Arrest with a warrant	14
2.2.2 Arrest without a warrant	15
2.3 Major rights of an arrested person	17
2.3.1 Rights under Article 5(3) of the Federal Constitution	18
2.3.2 Rights under Criminal Procedure Code	19
2.3.3 Rights under the Internal Security Act 1960	20
 <u>Chapter III: Rights under Article 5(3) of the Federal Constitution</u>	
3.1 From time of arrest	24
3.2 Right to consult counsel	26
3.3 Time-element concerning Article 5(3)	30
3.3.1 Clause (a)	30
3.3.2 Clause (b)	31
3.4 Over-all view of Article 5(3)	32

Chapter IV: Rights under Criminal Procedure Code

4.1	Rights during investigation	35
4.2	Grounds to refuse visit by counsel	37
4.3	Police interrogation	42
4.4	Summary	50

Chapter V: Rights under the Internal Security Act 1960

5.1	History of habeas corpus	56
5.2	Right to issue writ of habeas corpus	58
5.3	Procedure to issue habeas corpus	65
5.3.1	General Survey	65
5.3.2	Improperly or Illegally detained	67
5.3.3	Costs	76
5.4	Appeal on habeas corpus	77

Chapter VI: Conclusion

6.1	Conclusion	79
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Bibliography

## 1.1 Introduction

Malaysia gained her independence from Britain in 1957. Together with that, Malaysia adopted a form of government by which the supreme law of the land was the written constitution. Part II of this instrument dealt with fundamental liberties. Since then, it has been wondered by both lawyers and laymen, to what extent the court would be willing to implement such right. The first case which appeared before the High Court, Chia Khin Sze v. The Menteri Besar of Selangor,<sup>1</sup> made the legal world hold its breath with expectation. However, all high hopes were disappointed. A restrictive interpretation to the Constitution was given by the Court and this reduced it to be a mere declaratory function.

This interpretation however was impliedly disapproved by the Privy Council in the case of Surinder Singh Kanda v. The Government of the Federation of Malaya,<sup>2</sup> where Lord Denning expressed the opinion of the Privy Councillors in the following words:<sup>3</sup>

"In a conflict of this kind between the existing law and the Constitution, the Constitution must prevail. The Court must apply the existing law with such modifications as may be necessary to bring it into accord with the Constitution."

But where complicated questions of law and fact in a case, arise, and the party concerned fails to reach the situation himself effectively, denial of legal assistance may not amount to denial of natural justice. Denial of legal representation is often justified on the ground that it saves expense and thus protects the poor against the rich and also reduces delay.

In Malaysia, the right of an arrested person to be defended by counsel contained in Article 5(3) of the Federal Constitution. It is provided under this Article that:

"Where a person is arrested, he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and defended by a legal practitioner of his choice."