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RIGHTS OF AN ARRESTED PERSON

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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,¹ 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,² where Lord Denning expressed the opinion of the Privy Councillors in the following words:³

"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."