

(i)

GOVERNMENTAL POWER AND HUMAN RIGHTS IN TIMES OF  
EMERGENCY - A Brief Survey On Article 150 of  
Malaysian Constitution.

by

ABDUL KHALID SHAH BIN MOHAMAD OMAR  
DIPLOMA IN LAW - 82735377  
School Of Administration and Law  
1985/86.

for

My parent

and

My future wife, Ruzilah

KUALA LUMPUR

August 1986.

ACKNOWLEDGEMENT

In preparing this project paper I have greatly assisted by Enchik Azman Ja'afar, who is also my best friend, for his comment and constructive opinion while kindly undertook the revision of the chapters concern. I express my thank also to Mr. Hardial Singh and to Mr. J.H.Chellino as my advisors for suppling me all the materials that is needed for this project. And also to my brother Encik Khairuddin Shah for helping me until the end to complete this project.

Finally, I am extremely grateful also to my close companian, Ruzilah, for giving me the support and courage to finish this project and not to forget also to INSTITUTE NADA who type my manuscript.

Thank you.

PREFACE

This project is written especially for the academic requirement by the School of Administration and Law for the completion of my final year study as a law student. My favourite subject is Constitutional Law and I therefore choose this topic as my project paper : Governmental power And Human Rights In Times Of Emergency - a brief survey on Article 150 of Malaysian Constitution.

This project paper is a study concerning the power confer by Article 150 to the Yang DiPertuan Agong who represent the government in exercising such power in times of emergency and the restriction thereof. This project will also touch upon the 'Fundamental Rights' incorporated in the Malaysia Constitution and the effect of emergency powers to such rights. Most of the discussion is focus in Chapter One and Two.

Chapter One gives an introduction about the Federal Constitution of Malaysia which is discuss in three parts : (1) Its brief history (2) Provision of Fundamental Rights and (3) Provision of Article 150. Chapter Two deals with Article 150 in detail and is divided into two parts : (1) Proclamation of Emergency and (2) Emergency Legislation.

I hope this project paper will be useful as reference to all future law student in Constitutional Law.

TABLE OF CASES

1. A.G. v. Reynolds (1979) 3 A.E.R. 129
2. ADM Jabalpur v. Shirkant Shinkla (1966) A.I.R. S.C. 1207
3. Bhagat Singh v. King-Emperor (1981) A.I.R. PC 111
4. Bhutnanth v. State of West Bengal (1974) A.I.R. S.C. 807
5. Basanta Chandra v. Emperor (1944) A.I.R. PC 86
6. Datuk James Wong Kim Min v. Minister of Home Affairs (1976) 2 MLJ 245
7. Dinsa Maw Naing v. Commissioner of Police, Rangoon (1950) Burma Law Rep. 17
8. Dato Menteri Othman v. Dato Ombi Syed Alwi (1981) 1 MLJ 29
9. Duport Stells Ltd. v. Sirs (1980) 1 WLR 142
10. Eng Keock Cheng v. P.P. (1966) 1 MLJ 18.
11. Fan Yew Teng v. P.P. (1975) 2 MLJ 235
12. Gopalan v. State of Madras (1950) A.I.R. SC 27
13. Government of Malaysia v. Mahan Singh (1975) 2 MLJ 155

INTRODUCTION

GENERAL SURVEY OF THE SUBJECT.

Arising from the discussion in 1956 for an independent Federation of Malaya, the Reid Constitutional Commission was appointed to recommend constitutional arrangement for the proposed Federation. In due course, the Constitutional Commission presented its report together with its draft constitution which, after further examination and some amendments, was finally promulgated as the Constitution of Malaya on Merdeka Day. This Constitution made provisions for a ' federal form of government ' for the whole country as a single independent unit within the Commonwealth based on Parliamentary democracy with a bicameral legislature, in accordance with the term of reference.

Although the term of reference for the Commission had not indicated whether the doctrine of legislative supremacy or constitutional supremacy should prevail, the written Constitution which the Reid Commission presented made it abundantly clear, however, that the entire philosophy of the constitutional arrangements was the doctrine of constitutional supremacy. Article 4 of the Constitution provided :

This Constitution is the supreme law of the Federation and any law passed after Merdeka Day