

RIGHTS OF AN ARRESTED PERSON BY VIRTUE OF SECTION 28A OF  
THE CRIMINAL PROCEDURE CODE: AN ANALYSIS

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The students/authors confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others.

## **Abstract**

The amendment of section 28A of the Criminal Procedure Code (CPC) which came into force since September 2007, amplifies the rights of an arrested person which are the right to be informed on the grounds of arrest, the right to inform a relative or friend on the arrest and the right to consult with legal practitioner. However, there are certain criticisms brought forth on the enforcement of this amendment. Therefore, this study is carried out to provide a better understanding and to determine whether section 28A provides an even balance between the rights of persons arrested and the police's power and duty in doing their job and to avoid unlawful arrest. Based on case laws and interviews that had been conducted, the result is as follows. The criticisms against section 28A and cases regarding infringement of arrested persons are more of an administrative and management issue rather than legal issues. Therefore, to conclude, it can be seen that section 28A itself is adequate to protect the rights of arrested persons. However, the powers conferred to the authorities should be monitored and the police officers themselves should be educated on how to execute their powers fairly and in accordance with the provision. It is hoped that the proposed ideas stated will help in achieving the primary objective of section 28A of the CPC, which is to protect the rights of person arrested.

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## CHAPTER 1

### Introduction

#### 1.0 Research topic

Rights of arrested person by virtue of section 28A of the Criminal Procedure Code: An analysis

#### 1.1 Research background

Right to life and liberty are one of the fundamental liberties accorded to every citizen in Malaysia under Article 5(1) of the Federal Constitution. When a person is arrested, this right under this provision is then severely limited. There must be a lawful and reasonable justification made when the authority intends to incarcerate and restrict a person's right of life and liberty. The subsections under Article 5 serve to protect this right and to avoid unlawful detention by spelling out the rights of a person when they are arrested.

When a person is arrested, he has a fundamental right to be informed as soon as possible in ordinary language, of the grounds of his arrest unless that can be inferred from the surrounding circumstances or if he makes it impossible for the person making the arrest to inform him.<sup>1</sup> Thus, a person arrested is entitled to ask the reasons for his arrest as well as to which police station he is being taken to.<sup>2</sup>

Article 5(3) of the Federal Constitution requires that he shall be informed as soon as may be of the grounds of his arrest. The provision also provides that where a person is arrested he shall be allowed to consult and be defended by a legal practitioner of his choice.

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<sup>1</sup>Baljit Singh. (2011). *Rights of arrested person*. Malaysia: Sweet & Maxwell.

<sup>2</sup>*Ibid.*