

Upholding The Rights of Arrested Individuals:  
A Comparison Between Malaysia and the United Kingdom's Legal Framework

*(Memartabatkan Hak Individu yang Ditahan: Perbandingan Antara Kerangka Perundangan  
Malaysia dan United Kingdom)*

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**ABSTRAK**

Pindaan seksyen 28A Kanun Prosedur Jenayah (CPC), yang berkuat kuasa pada September 2007, menguatkan hak orang yang ditangkap, iaitu hak untuk dimaklumkan tentang alasan penangkapan, hak untuk memaklumkan kepada saudara atau rakan tentang penangkapan, dan hak untuk berunding dengan pengamal undang-undang. Bagaimanapun, beberapa kritikan telah dibangkitkan berhubung penguatkuasaan pindaan ini. Oleh itu, kertas kerja ini bertujuan untuk mengkaji rangka kerja undang-undang di Malaysia yang mengelilingi hak orang yang ditangkap, dengan memfokuskan kepada Perkara 5 Perlembagaan Persekutuan dan Seksyen 28A Kanun Tatacara Jenayah (CPC). Walaupun Perkara 5 Perlembagaan Persekutuan menjamin perlindungan terhadap penahanan yang menyalahi undang-undang, Seksyen 28A mempertingkatkan hak ini dengan membenarkan orang yang ditangkap untuk memberitahu saudara, rakan atau peguam cara. Walau bagaimanapun, bahasa yang samar-samar seperti "secepat mungkin boleh dilaksanakan" dan "masa yang munasabah" mewujudkan kekaburan tafsiran, yang berpotensi membolehkan penyalahgunaan oleh penguatkuasa undang-undang. Perbandingan dengan Akta Keterangan Polis dan Jenayah 1984 (PACE) United Kingdom menyerlahkan perlindungan yang lebih kukuh, termasuk peraturan terperinci, penyimpanan rekod mandatori dan mekanisme pengawasan bebas yang memastikan penguatkuasaan undang-undang bertanggungjawab. Oleh itu, kertas kerja ini menekankan keperluan untuk definisi berkanun yang lebih jelas, mekanisme pengawasan yang mantap, dan kesedaran dalam kalangan penguatkuasa undang-undang untuk menegakkan hak asasi di bawah Perkara 5. Terutamanya, pengukuhan perlindungan adalah penting untuk mencegah penderaan, memastikan layanan yang adil terhadap tahanan, dan mengurangkan beban mahkamah yang menangani aduan berkaitan penahanan.

**Kata Kunci:** Hak orang yang ditangkap, Kanun Prosedur Jenayah (CPC), Perkara 5 (Perlembagaan Persekutuan), Pengawasan penguatkuasaan undang-undang, Perlindungan tahanan

**ABSTRACT**

*The amendment of section 28A of the Criminal Procedure Code (CPC), which came into force in September 2007, amplifies an arrested person's rights, which are the right to be informed of the grounds of arrest, the right to inform a relative or friend of the arrest, and the right to consult with a legal practitioner. However, certain criticisms have been raised regarding the enforcement of this amendment. Therefore, this paper aims to examine the legal framework in Malaysia surrounding the rights of arrested persons, focusing on Article 5 of the Federal Constitution and Section 28A of the Criminal Procedure Code (CPC). While Article 5 of the Federal Constitution guarantees protection against unlawful detention, Section 28A enhances this right by allowing an arrested person to notify a relative, friend, or solicitor. However, vague language such as "as soon as may be practicable" and "reasonable time" creates interpretative ambiguity, potentially enabling misuse by law enforcement. Comparisons with the United Kingdom's Police and Criminal Evidence Act 1984 (PACE) highlight stronger safeguards, including detailed regulations, mandatory record-keeping, and independent oversight mechanisms that hold law enforcement accountable. The paper is doctrinal research and employs qualitative methods in its conduct. Legal*

*provisions and decided cases are scrutinized and references from published books, articles and opinions from practitioners are examined. At the end, this paper emphasises the need for clearer statutory definitions, robust oversight mechanisms, and awareness among law enforcement to uphold fundamental rights under Article 5. Notably, strengthening safeguards is vital to prevent abuses, ensure fair treatment of detainees, and reduce the burden on courts addressing detention-related complaints.*

*Keywords: Arrested person's rights, Criminal Procedure Code (CPC), Article 5 (Federal Constitution), Law enforcement oversight, Detention safeguards*

## INTRODUCTION

The rights of arrested individuals play a critical role in ensuring fairness and justice within Malaysia's legal framework in preventing abuse of power by enforcement authorities. For instance, **Article 5(4) of the Federal Constitution**<sup>1</sup> provides that an arrested person must be brought before a magistrate within 24 hours. In contrast, **Section 28A of the Criminal Procedure Code**<sup>2</sup> 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 a legal practitioner. Similarly, the **United Kingdom's Police and Criminal Evidence Act 1984 (PACE)**<sup>3</sup> and its accompanying **Code of Practice**<sup>4</sup> provide a comprehensive framework for protecting the rights of detainees. Both legal systems aim to prevent arbitrary detention and uphold due process, yet they differ significantly in their approaches, mechanisms, and enforcement. This study aims to examine and compare the legal frameworks governing the rights of arrested individuals in Malaysia and the United Kingdom. It seeks to identify both systems' strengths and weaknesses and propose measures for improving the protection of these fundamental rights in Malaysia.

The significance of this research lies in its potential to address important gaps in Malaysia's legal framework governing the protection and rights of arrested persons. By comparing Malaysia's laws with the more detailed and enforceable provisions under the UK's PACE, this research highlights areas where Malaysia can strengthen its laws to better safeguard individual liberties

and ensure accountability in law enforcement. The main outcome of this research is a set of recommendations to improve Malaysia's legal framework for protecting arrested individuals. These recommendations aim at enhancing awareness among law enforcement agencies, reducing instances of rights violations, and promoting stronger public trust in the justice system.

The objectives of this study are as follows: (1) to analyze the provisions under Article 5 of the Federal Constitution and Section 28A of the CPC concerning the rights of arrested persons; (2) to compare these provisions with the UK's PACE and its Codes of Practice; (3) to identify the strengths, weaknesses, and gaps in Malaysia's framework; and finally, (4) to propose recommendations for enhancing the protection of arrested individuals in Malaysia. The findings or outcome of this study aim to contribute to the development of a more robust legal system which aligns with international standards of human rights.

Based on the objectives of this study, the following research questions were developed:

1. Whether the key rights guaranteed to arrested individuals under Section 28A of the CPC sufficiently protect their liberties?
2. How do the provisions under Malaysia's CPC and the UK's PACE differ in scope and enforcement?
3. What are the gaps and limitations in Malaysia's legal framework for

protecting the rights of arrested individuals?

4. How can Malaysia's laws be improved to align with international standards and ensure better accountability?

The paper is doctrinal as it examines and compares the particular law in Malaysia and in the United Kingdom relating to the rights of arrested persons. It also looks into how the court went about applying the laws in the decided cases. In achieving the objectives and answering the research questions, the paper adopts qualitative methods. Other than analyzing the laws and decided cases, the authors also traced the development and current changes to the laws by conducting library research and referred to books, published and written articles, and published opinions from practitioners and judges.

The structure of this study is as follows: Section 1 analyzes current decided Malaysian cases and a few of previous cases that established principles relating to rights of arrested individuals in Malaysia; Section 2 discusses the issues traced from the existing related provisions; Section 3 covers the issues within the Malaysian legal framework, and Section 4 presents a comparison of laws between Malaysia and the United Kingdom, highlighting similarities and differences in protecting the rights of arrested individuals. Section 5 covers the importance of resolving the issues in the Malaysian legal framework to strengthen the protection of arrested persons. Finally, Section 6 concludes the study, summarizing the key findings and offering recommendations for improvement.

## 1.0 An Overview of the Application of Section 28A Through an Analysis of Cases

Section 28A of the Criminal Procedure Code (CPC) is a cornerstone in ensuring procedural fairness and safeguarding the

rights of arrested individuals. It mandates that those detained must be informed of their right to consult legal counsel and be given a reasonable opportunity to do so. The application of this section has been scrutinised in key cases such as *PP v Phee Boon Poh & Ors*, *Profusion Petroleum Sdn Bhd v Ketua Setiausaha Kementerian Dalam Negeri dan Kos Sara Hidup & Anor*, and *Wong Chee Wooi v Lembaga Pencegahan Jenayah & Ors*. These cases illustrate the varying degrees of compliance with procedural safeguards and their impact on the rights of the accused and the legitimacy of law enforcement actions.

### 1.1 Analysis of the Case *Profusion Petroleum Sdn Bhd v Ketua Setiausaha Kementerian Dalam Negeri dan Kos Sara Hidup & Anor*

In contrast, the case of *Profusion Petroleum Sdn Bhd v Ketua Setiausaha Kementerian Dalam Negeri dan Kos Sara Hidup & Anor*<sup>5</sup> demonstrated adherence to procedural requirements under Section 28A. The case involved the arrest of individuals on suspicion of misappropriating subsidised diesel. The court found that the police had complied with procedural mandates by issuing the "Rights of Person Arrested" form to the detained individuals, thereby informing them of their rights to legal counsel. This compliance underscored the legitimacy of the police's actions and the importance of balancing investigative powers with individual rights.

Additionally, the court examined the arrests under Section 23(1)(a) of the CPC, which permits detention based on reasonable suspicion. The observed pattern of activities, including the transportation and storage of subsidised diesel, provided sufficient grounds for suspicion. The court upheld that procedural compliance with both Section 28A and Section 23(1)(a) was critical in legitimising the investigation and protecting the procedural rights of the accused.

## 1.2 Analysis of the Case **Julius Tan Kok Pin v Pengerusi Lembaga Pencegahan Jenayah Malaysia & Lain-Lain**

In (6)Julius Tan Kok Pin V Pengerusi Lembaga Pencegahan Jenayah Malaysia & Lain-Lain [2022]<sup>6</sup> the applicant filed an application for habeas corpus. There were three issues relied upon by the learned counsel: (a) that there was an abuse in the process of detention and/or remand of the applicant; (b) breach of Article 5 (3) of the Federal Constitution; and (c) and that there was a delay in serving the detention order on the applicant. The High Court chose to deliberate on issue (a) and held that the applicant can challenge the legality of his detention on the failure of respondent to inform the grounds of detention under sections 28A and 4(3) of the CPC.

The court also analysed the police report filed by the arresting officer and that in the report there was no mention about the officer explaining the applicant rights under section 28A. The court further held that the effect of the failure to observe applicant's rights under section 28A could not be corrected and thus the application was allowed.

## 1.3 Analysis of the Case **Wong Chee Wooi v Lembaga Pencegahan Jenayah & Ors**

Similarly, in *Wong Chee Wooi v Lembaga Pencegahan Jenayah & Ors*<sup>7</sup>, the court assessed whether procedural compliance under Section 28A was observed during the applicant's arrest under the Prevention of Crime Act 1959 (POCA). Wong claimed that his procedural rights were violated,

alleging that he was not informed of the grounds for his arrest, denied access to legal counsel, and not provided an interpreter in his preferred dialect.

However, the court found that the authorities had adhered to procedural requirements. Wong was issued a "Rights of Person Arrested" form, and a Hokkien interpreter was provided to ensure he understood his rights and the charges against him. The court emphasised that while the duty of the authorities is to inform an arrested individual of their rights, it is ultimately the individual's responsibility to exercise these rights. Wong's failure to appoint legal counsel was thus viewed as a personal choice, not a procedural lapse. This case highlights the judiciary's reliance on evidence to determine compliance and reinforces the critical role of Section 28A in maintaining the legitimacy of law enforcement actions.

## 1.4 Analysis of the Case **Tee Jun Wei v. Inspektor Parthiban Suntharam & Lain-Lain**

In *Tee Jun Wei v. Inspektor Parthiban Suntharam & Lain-Lain* [2021]<sup>8</sup>, the applicant's application for habeas corpus was allowed on the ground, *inter alia*, that the arresting officer failed to explain about the applicant's right to communicate with a relative or a friend for the purpose of informing his whereabouts under section 28A(2)(a) of the CPC. The officer however did explain about the applicant's right to a lawyer. The failure, according to the court, amounted to non-compliance of section 4(3) of the CPC. Thus, the application for habeas corpus was allowed.

## 1.5 Analysis of the Case **PP v Phee Boon Poh**

In *PP v Phee Boon Poh*<sup>9</sup>, the applicants were denied access to legal representation during the remand application process, a

clear violation of Section 28A. This provision explicitly mandates that an arrested individual must be informed of their right to consult legal counsel and provided a reasonable opportunity to exercise this right. The Senior Assistant Registrar (SAR) in this case granted a remand order for five days without adequately addressing the applicants' objections regarding their inability to consult their legal representatives. This procedural failure contravened both Section 28A of the CPC and constitutional guarantees under Article 5(1) and Article 5(3) of the Federal Constitution, which ensure the right to life, liberty, and access to legal counsel.

The court held that the SAR's failure to ensure compliance with Section 28A rendered the remand order invalid, emphasising the mandatory nature of this provision in protecting the rights of individuals in custody. This judgment highlights that procedural safeguards are integral to upholding the rule of law, and their violation can undermine judicial actions and erode public confidence in the criminal justice system.

## 1.6 Comparative Analysis of the Cases

These cases collectively illustrate the dual role of Section 28A in the criminal justice process, which is protecting the rights of detainees and legitimising law enforcement actions. In *PP v Phee Boon Poh*, the failure to comply with Section 28A resulted in a violation of constitutional rights and invalidation of judicial actions. In contrast, the *Profusion Petroleum and Wong Chee Wooi* cases demonstrated the importance of procedural adherence in safeguarding individual rights and maintaining the integrity of investigations.

In the recent development of adherence of section 28A, it can be observed that the court is strict in ensuring compliance by the arresting authorities.

## 2.0 Issues to be Discussed Regarding the Malaysian Legal Framework

Certain minimal rights of man based on the concept of 'equality and liberty' were recognised early in human civilisation. These were accorded international recognition in the Universal Declaration of Human Rights in 1948 and to some extent incorporated into the Federal Constitution of Malaysia. The Judiciary in Malaysia is entrusted with the guardianship of these rights under the Constitution. To further enhance the protection of such rights, treaties such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights serve as a guideline for Malaysian legislation. Notably, Sections 28 and 28A of the CPC have been criticised for not being fully aligned with these international human rights standards. The vague language used in Sections 28 and 28A, particularly the lack of a specific timeframe, may violate Malaysia's international commitments to ensure fair treatment of arrested persons.

### 2.1 Presenting an Arrested Person Before the Magistrate

Section 28(1) of the CPC<sup>10</sup> mandates that any person arrested must be brought before a Magistrate without unnecessary delay and within 24 hours, excluding travel time. While the provision had stated clearly to exclude the travel time, there had been numerous cases debating on the true meaning and to what extent the law started counting the time. The provision's reference to "unnecessary delay" had been the main factor that led to inconsistent interpretations. What constitutes a "necessary" delay is subjective and can vary based on police discretion, resource availability, or logistical challenges.

This ambiguity can result in extended detentions that infringe on the suspect's constitutional right to personal liberty under Article 5(4) of the Federal Constitution, which requires judicial



oversight for any detention beyond 24 hours. One of the cases that can be seen to have portrayed the issue within our legal framework is *Ooi Ah Phua v Officer-in-Charge of Criminal Investigations*<sup>11</sup> where the applicant was detained for several days without being brought before a Magistrate.

The Federal Court ruled that detaining the individual beyond the statutory period without justification violated the person's right to liberty under Article 5<sup>12</sup>. The police were criticised for failing to adhere to the principles of Section 28(1). *Ooi Ah Phua* highlights the importance of strict compliance with the CPC to prevent abuses of power and ensure timely judicial oversight; however, certain factors need to be considered, such as public holidays or removing a suspect from rural areas, that may cause delays.

## 2.2 The Police's Duty to Inform Grounds of Arrest

Section 28A(1) of the CPC states that the arrested person "shall be informed of the reasons for the arrest as soon as may be." However, the phrase "as soon as may be" in this provision has been criticised as quite vague and could potentially infringe upon the arrested person's rights provided under Article 5(3) of the Federal Constitution.<sup>13</sup> This is because if the police were to treat the wording of this provision with leniency, then there surely would be a conflict between administering national security and safeguarding the rights of the arrested person.

Informing detainees of the grounds of their arrest is a crucial part of the procedural laws for making an arrest. Explained in many case laws, such as *Abdul Rahman v Tan Jo Koh*, where the English House of Lords held that a person arrested on suspicion of committing an offence, is entitled to immediately know the reason for his arrest. It was held that if the reason were withheld, the arrest and detention would amount to false imprisonment until the time he was told the

reason.<sup>14</sup> Furthermore, propounded in the case of *Re PE Long @ Jimmy & Ors v Menteri Hal Ehwal Dalam Negeri Malaysia & Ors*, the justification for such a right is to ensure that the accused has sufficient information to enable him to defend himself at the police station.<sup>15</sup>

## 2.3 Procedural Laws Regarding Delaying the Accused Person from Legal Counsel

Moving on, Section 28A(6)<sup>16</sup> allows police to deny a suspect access to legal counsel if granting such access is deemed likely to interfere with investigations, result in evidence tampering, alert accomplices, or otherwise jeopardise law enforcement efforts. This provision empowers law enforcement but also raises concerns about the constitutional right to legal representation under Article 5(3) since the police may abuse this clause to delay suspects' access to counsel, compromising the fairness of subsequent interrogations or statements recorded.

Taking the case *Chong Fook Kam & Ors v Public Prosecutor* [1970]<sup>17</sup> to prove the point in debating this issue, the Privy Council, in this case, held that while it is the police officer has to investigate offences diligently, they must also respect the rights of individuals in custody, including the right to access legal representation. The court emphasised that denying a suspect access to a lawyer should only be done under exceptional circumstances, and this denial must be justified and documented by the relevant authorities.

The law does not require police to obtain prior judicial approval or provide detailed reasoning for denying access to legal counsel, and this lack of oversight creates room for arbitrary or unjustified denial of rights.

## 2.4 Legitimate Restriction to Deny the Right of an Arrested Person to Counsel

Section 28A(8) of the CPC<sup>18</sup> provides that, “the Police can deny an arrested person his rights (including the right to communicate and consult with a lawyer) the Police reasonably believe that compliance with Section 28A(2) will result in, (a) the accomplice of the arrested person being informed and taking steps to avoid arrest; or (b) the concealment, fabrication or destruction of evidence or the intimidation of potential witnesses. Section 28A(8) can also be invoked if the issue of the safety of others is taken into consideration and the questioning or recording of a statement is found to be so urgent that it should not be delayed.<sup>19</sup>

Thus, the issue to be discussed is regarding the interpretation of ‘reasonably believe’ in the provision, which introduces a subjective standard that heavily relies on the discretion of police officers. Defined in the case of *PP v Mah Chuen Lim & Ors*, the judgment stated that the element of reasonableness in Section 28A(8) is intended to be a right given ‘with all convenient speed’. Such a right would depend on the circumstances of each particular case.<sup>20</sup>

Furthermore, in the case of *Ooi Ah Phuan v Officer in Charge, Criminal Investigation*, Suffian LP stated in his judgement that the right of an arrested person to consult his lawyer begins from the moment of arrest, however, there needs to be a balance between the right of the arrested person to consult his lawyer and the duty of the police to protect the public from wrongdoers by collecting whatever evidence exists against them.<sup>21</sup> As such, this case could be used to justify the wording of ‘reasonably believes’ in Section 28A(8) of the CPC. However, the court in the case of *Ramli Bin Salleh v Inspector Yahya Bin Hashim* has emphasised that though the right to immediate communication with a legal practitioner is subject to certain legitimate restrictions which might arise in the course of police investigations, such allowance should not be used with leniency or abused by police officers.<sup>22</sup>

It is submitted that the police are justified in withholding the suspect’s Counsel from getting access to his client if allowing Counsel would likely lead to interference with evidence, harm to persons, alerting suspects or hindering the recovery of property, or there is the possible danger that the Counsel may be the intermediary to the suspect towards the very disposal or removal of the evidence. As such, this justification has been said to be allowed if such orders have been necessarily certified by the District Chief Investigation Police Officer, followed by a written statement from him.<sup>23</sup> Mere refusal or oral refusal cannot therefore be accepted by the court, and the onus of proving to the satisfaction of the court that giving effect to the right to counsel would impede police investigation or the administration of justice falls on the police.<sup>24</sup>

However, the duration at which this denial is legally allowed and procedural laws for oversight mechanisms during this period of denial have yet to exist. Considering that neither the Federal Constitution nor the Criminal Procedure Code prescribes the time within which the arrested person shall be allowed to consult Counsel, Section 38 of the Interpretation and General Clauses Act 1948<sup>25</sup> generally states that where no time is prescribed, it shall then be done with all convenient speed. Despite this, the CPC was intended to be an exhaustive pronouncement of criminal procedure; as such, its provisions should be as explicit as practically possible.

To improve what could be said to be a *lacuna* in the law, reference could be made to the United Kingdom’s Police and Criminal Evidence Act 1984 (PACE) and the Codes of Practice created there. These written laws provide the overall framework for criminal procedure, including specifying a time at which an arrested person could be delayed communication or consultation with Counsel.<sup>26</sup> Furthermore, in the U.K., decisions to delay access to legal counsel are subject to strict

documentation and judicial scrutiny, whereby a magistrate must authorise continued denial.<sup>27</sup> This shows that there is still room for improvement in Malaysian law, in regard to specifying provisions and enforcing stricter procedural laws.

## 2.5 Lack of Privacy During Legal Consultations

Another significant issue is the lack of privacy during legal consultations under Section 28A<sup>28</sup>. While the provision allows for consultations with legal counsel, it also states that such consultations may occur "*within sight of a police officer, though not within hearing.*" This compromises the confidentiality of communications, as the mere presence of law enforcement can intimidate arrested individuals, restricting their ability to communicate freely.

The principle of confidentiality in lawyer-client communications was upheld in *Lee Kwan Woh v Public Prosecutor*,<sup>29</sup> where the court underscored the importance of protecting the confidentiality of legal consultations to ensure fair trial rights. In this case, the appellant argued that his right to a fair trial was violated because he was not given adequate access to legal representation after his arrest. It was contended that this failure undermined his ability to prepare an adequate defence, thereby violating his constitutional rights. The court held that the right to consult legal counsel must be meaningful and not illusory. It must be given in circumstances where the accused can freely and confidently communicate with their lawyer without fear or intimidation. As such, legal consultations must be conducted in a way that ensures confidential and effective communication between the accused and their lawyer. Thus, this case supports the contention that the wording of Section 28A(5) causes a lack of privacy to an arrested person when consulting their legal practitioner.

Comparing Malaysian law to an international standard, the European Court

of Human Rights (ECHR) has taken a stricter approach in cases like *Sakniovskiy v Russia*, where it ruled that a lack of confidentiality in lawyer-client communications violated the right to a fair trial under Article 6 of the European Convention on Human Rights<sup>30</sup>. In contrast, the UK's PACE ensures that consultations between a detainee and their solicitor are entirely private, except under narrowly defined exceptional circumstances, such as national security concerns. Even in such cases, strict oversight mechanisms and documentation requirements apply<sup>31</sup>. In conclusion, this shows that even if Malaysian legislation chooses to remain with the current wording of Section 28A(5), stricter procedures and oversight mechanisms need to be formulated in order to ensure that the arrested person is subjected to a fair trial.

## 3.0 Comparison of Laws Between Malaysia and the U.K.

### MALAYSIA

It is indisputable that each and every individual has the right to life and liberty as provided under Article 5 of the Federal Constitution of Malaysia.<sup>32</sup> As aforementioned, this is a given constitutional right to those with the nationality of Malaysia, and since it is a constitutional right, the Malaysian legislature ensures to safeguard these rights by providing extensive and comprehensive procedures for arresting a person. In essence, Malaysia has adopted the international legislation of the Universal Declaration of Human Rights 1948 ("UDHR")<sup>33</sup> as seen incorporated in our very own Federal Constitution. This is a fundamental right provided to people of this land, and therefore, under this article, no arbitrary arrest or detention should be imposed on any person. The Constitution, under Article 5, limits the power exercisable by the three limbs that are the Executive, the Judiciary and the Legislative.



From here, we can see how the Malaysian laws on arresting a person have adopted the adversarial system that was ultimately incorporated into the Criminal Procedure Code to ensure that the process of arresting a person by a Police officer does not abuse the rights of the individual and to protect their rights.<sup>34</sup> To touch lightly on the adversarial system in Malaysia, it came from the English legal system, where facts and the law are left to the parties in dispute, where they have the liberty and discretion to present and argue their case in front of an impartial judge that operates in a factual vacuum. In other words, the adversarial system includes the important part of an oral trial to be done before deciding something.<sup>35</sup>

This is better explained in the case of *Jones v National Coal Board* <sup>36</sup> where Lord Denning has ruled that;

*“In the system of trial which we have evolved in this country, the judge sits to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large, as happens, we believe in some foreign countries. Even in England, however, a judge is not a mere umpire to answer the question ‘How’s that?’ His object above all, is to find out the truth, and to do justice according to law;... [Was it not] Lord Greene M.R. who explained that justice is done by a judge who holds the balance between the contending parties without himself taking part in their disputations? If a judge, said Lord Greene, should himself conduct the examination of witnesses, he, so to speak, descends into the arena and is liable to have his vision clouded by the dust of conflict”;*

We can see how the Malaysian criminal system adheres to the adversarial system of the land in the context of arresting a person where police officers would arrest a person for the purpose of getting evidence and doing investigations before undergoing a trial in court in front of a judge such as that

provided under Chapter XIII of the Criminal Procedure Code. It is important to note that the hearing in court serves to help the judge to determine whether the accused is guilty by listening to the defence and evidence presented instead of actively descending into the arena of conflict.

To add to the aforementioned, the law in Malaysia not only provides for the arrest of a person accused of committing a crime. The law in Malaysia also provides for what is called a preventive detention, which is under the Security Offences (Special Measures) Act (SOSMA) 2012 in pursuance of Article 149 of the Federal Constitution.<sup>37</sup> Many non-governmental organisations, as well as the Human Rights Commission of Malaysia criticise the controversial enforcement of this act and the injustice it may bring to the people due to the laws under SOSMA, which is on the borderline of breaching Article 5 of the Federal Constitution.

After the reformation of the Internal Security Act, SOSMA replaces the procedural aspect of the ISA, which enables the police to detain a person for a maximum of 28 days without trial for security offences committed under certain sections of the Penal Code and the Anti-Trafficking in Persons and Anti-Smuggling of Migrants Act 2007.<sup>38</sup> Nevertheless, there are criticisms and controversies on the enforcement of the SOSMA 2012 such as the 2016 case of Maria Chin Abdullah, who was detained under this act. Throughout the detention of Maria Chin Abdullah, there had been claims of abuse of process where she was detained for a prolonged 28 days of detention, having the authorities to limit her access from the aid of a lawyer as well as putting her in a facility that is claimed to be a secret detention facility.<sup>39</sup> It is a doubt that certain parties would enforce the SOSMA 2012 more with a political goal in mind instead of for the public order, which undoubtedly could open to a number of abuses done under this act.

## **UNITED KINGDOM (UK)**

It can be said that the rights of an arrested person in the United Kingdom show and represent a cornerstone of the legal system in that country, which reflects justice and fairness towards an arrested person in the likes of Malaysian laws. The rights in the United Kingdom are ultimately enshrined in domestic legislation, primarily the Police and Criminal Evidence Act 1984 (PACE). This is the main legislation which governs the delicate balance of protecting the rights of an arrested individual as well as the duty of the state to uphold the law and maintain order in society. In addition to that, the Criminal Justice Act 2003 is also one of the primary legislation which governs the powers of authoritative bodies in the UK, which provides the process including for arrest, detention, treatment in custody and the like it. It is common to read both of these legislations hand-in-hand in determining whether the rights of an arrested individual are safeguarded or breached by the authorities.

Despite the aforementioned legislation being the main safeguards that outline the right of an arrested individual, UK law also relies on court decisions to determine whether the act of arresting said person abides by the given law or otherwise. This can be seen in the case of *Christie v Leachinsky*<sup>40</sup>, where the House of Lords in this case ultimately outlined one of the main rights of an arrested individual, which was to be arrested with a warrant to ensure that the process was indeed lawful. The case involved the respondent being arrested without a warrant by the authorities at his warehouse under the charge of “unlawful possession” and being detained for weeks. This ultimately led the respondents to argue that it was a lawful imprisonment by the police. From this case, the court outlines the principle of authorities having to inform the arrested person of his grounds for his arrest, and without informing the arrested the reason for his arrest constitutes an unlawful arrest and therefore his application for false imprisonment was allowed.

Delving further into PACE 1984, s 28(1) of the act is the apex of laws and rights of an arrested person where it explains all the statutory rights of an arrested person in the UK including those laws of custodial safeguards such as detention needs to comply with the fundamental principles of legality, necessity, proportionality, respect for dignity and nondiscrimination. Under the UK law as well, police custody should be the last resort and should only be done when it is necessary and as prescribed in the written laws.<sup>41</sup> Under this act as well, there are very specific guidelines to be followed in making an arrest where initially, the person making the arrest has to identify him or herself as to whether he is a police officer or any other arresting authority.<sup>42</sup>

This is then followed by informing the arrested person of the grounds of his arrest soon after the arrest was made, or to be told at a reasonable time. Therefore, it is of the utmost importance that the process is followed as given under Section 28 since noncompliance constitutes an unlawful and dire breach of the arrested person’s rights. When an arrest is deemed as unlawful, the effects of the arrest can be explained as in the case of *R v Iqbal*<sup>43</sup> where in this case, the issue to be discussed was whether the conviction to escape one lawful custody is sustainable in the context of the individual not being arrested but the police officers had the intention of arresting him. To give light to this case, the offender was indeed handcuffed by the police, yet he was not read his grounds of arrest by the police officers making the arrest.

It has always been the principle that the authorities have no power to detain a person without an official arrest being made. In this case, the court decided the appeal to be allowed and to quash the conviction of attempt to escape by the appellant. It is apparent how important it is to make sure that the process of arresting a person is strictly followed, as any non-adherence would risk the arrest being unlawful and lead to the release of the

arrested, slowing the process of investigation and achieving justice.

Under the UK laws as well, they explicitly laid out the process of arresting a juvenile person where firstly, the grounds of the arrest has to be explained to the juvenile in a way where he can understand and to be done elsewhere other than on school grounds or places of education unless it is unavoidable.<sup>44</sup> The parents or guardians of the juvenile should also be informed of the arrest at a time as soon as the arrest is made. Similar to a normal arrest, the arrested juvenile is to be brought to a police station as soon as it is possible, as stated under Section 30 PACE 1984.<sup>45</sup> Given the nature of children and those underage, it is evident that they are sensitive, emotional, and prone to fear. Therefore, a conscientious process for arresting a juvenile must be followed thoroughly. This includes the added rights of an arrested juvenile to have a gentler approach throughout each stages of the arrest such as their parents or guardians being present during the interviewing process during investigation, the proportionate or non-usage of force or restraints such as handcuffs during the arrest and the arrested juvenile should be separated from the detained adults during in custody. UK laws emphasise the vulnerability of a child who has been arrested, as shown in their laws, where strict adherence is to be done by the authorities to ensure that the arresting process is done with less detrimental consequences on the child's physical and mental wellbeing.

As any country would do, the UK also extends the rights of an arrested person post-arrest, which focuses on the environment and the treatment given to the arrested person. This is explained in detail under Part 3.1; 3.2; 3.7 and 3.7A of Code C PACE 1984 where it is arguably one of the pivotal parts of the legislation on the arrest of a person. This part of the legislation ensures that the arrested are protected under their rights to abstain from any form of physical or mental abuse from authorities to obtain a guilty confession, which could

ultimately lead to self-incrimination. This is then followed by the right to consult a solicitor privately without any obstacle. We can delve into the case of *R v Grant (2005)*<sup>46</sup> that discusses the importance of the arrested individuals to access their rights and to avoid abuse of the powers of the authorities as provided in the statutes. In this case, the man was charged with murder, but he then argued the charge and applied for the proceeding to be stayed on the grounds that the police officers handling the arrest had eavesdropped and tape-recorded the conversation between him and his lawyer. This is a blatant violation of PACE 1984 and due to this fact, the Court of Appeal quashed the conviction. Laws LJ in this case contended that the act of eavesdropping and recording the conversation of the accused with his lawyer was unlawful and ultimately tainted the trial.

In addition to that, we can look into the rights of Habeas Corpus for an unlawful arrest being imposed on a person. We can refer to the Habeas Corpus Act 1679 to challenge the validity of the arrest. Habeas Corpus, derived from the Latin phrase meaning “you shall have the body,” constitutes a foundational legal remedy safeguarding individuals against arbitrary detention. Established under the Habeas Corpus Act of 1679, courts possess the authority to compel governmental authorities to produce a detained individual before them, thus facilitating an evaluation of the legality surrounding the individual’s detention. This fundamental right can be traced back to Article 39 of the Magna Carta (1215), which enshrined the principle that no free man shall be subjected to unlawful imprisonment. In contemporary legal practice, the invocation of habeas corpus frequently arises in instances where there are allegations or concerns pertaining to unlawful detention.

One of the major issues with arresting a person falls within the thin line of differentiating whether the arrest made was lawful or not. In the UK, this issue is answered with the sections underneath

PACE 1984, as well as court cases to demonstrate them better in order to determine the lawfulness of an arrest. One issue to start with is the language used during the arrest. As mentioned before, the grounds of arrest must be read soon after the arrest was made and UK being a country with high level of migration with a diaspora communities ranging from mostly immigrants and foreigners,<sup>47</sup> it can be assumed that not everyone in that country could speak perfect English thus what could happen when the arresting officer reads the grounds of arrest in a language that the arrested does not understand fully or to a juvenile who lacks the mental comprehension to understand what is the arrest for? This is answered with the cautionary step of the arresting authority to read to the arrested his Miranda Warning or the police caution, which commonly is read as *"You do not have to say anything. But it may harm your defence if you do not mention when questioned something which you later rely on in court. Anything you do say may be given in evidence."* This right is further secured by putting the burden on the arresting officer to provide an interpreter, as Section 28 PACE 1984 emphasises that the grounds of arrest are to be read in a way that the arrested understand. Failure to do so may result in an unlawful arrest due to the arrest being vulnerable enough to be induced into giving forced admissions of guilt, and this can lead to challenging the arrest in court.

Looking back at the given rights of an arrested person in Malaysia and the UK, there are a few impressive similarities that can be made when seeing these two legal systems handle this situation side by side. It is safe to say that Malaysia is ultimately following the right steps to ensure the safety of the arrested persons via the given rights to them, despite there being a couple of bumps and issues yet to be solved under this topic. For instance we can see how in Malaysia, the rights to an arrested individual is more as a constitutional rights under Article 5 of the Federal Constitution and the Constitution being the apex law of

the land, this right is securely guaranteed to any person expressly and therefore easier to challenge in court for the lawfulness of the arrest if there is a breach done. This right is read hand-in-hand with Criminal Procedure Code to ensure a lawful arrest process is done without violating the right of the individual is Unlike Malaysia, the UK does not explicitly ties this right via a constitutional protection rather that these rights are enshrined in statutes and international policy such as the European Convention on Human Rights (ECHR) under Article 5 which guarantees liberty and security. A couple of stark differences are how both countries provide laws on handling an arrest in cases where a foreign person is arrested, where he might not understand the language spoken. In the UK, the right to an interpreter is explicitly expressed under PACE Code C, whereas there are no specific provisions in the CPC for providing an interpreter for the arrested. The lack of express provision may be an issue in the near future where the arrested can challenge the validity of the arrest or detention due to the lack of a valid interpreter, which can constitute a breach of rights.

To illustrate, we can see in the case of *Public Prosecutor v Vasavan Sathiadew & Ors*<sup>48</sup> where the charges of his arrest were read to the appellant at a pace that was extremely fast that the appellant being a person certified with learning disability could not have reasonably be expected to understood the nature of his plea, and the consequences of his plea which then the appellant applied for revision under Section 325 of the CPC as to the regularity of the appellant's guilty plea had been accepted by the learned sessions court judge as safe. In this case, the court held that the gesture of the appellant, such as nodding his head and body gestures it is very clear to us that the appellant had indeed vocalised his guilty plea, which was then relayed by the court interpreter to the sessions judge. From this case, it highlights the importance of the arrested to understand the grounds of his arrest to ensure no mistrial or err during the

court proceedings. In like manner, we can see the difference where the UK would put a stronger emphasis on the transparency of the judicial oversight compared to the stricter approach taken in Malaysia. This obviously includes the aforementioned preventive detention under the SOSMA 2012, where the delayed access to legal aid or a lawyer can generally be allowed, as well as a broader and more lenient meaning to what constitutes police discretion under this act.

Fundamentally, this allows for a number of abuses of process done by the authorities in the name of obtaining evidence or getting confessions, despite it being at the expense of the arrested individual. Evidently, Malaysia provides a specific act to monitor security offences, while the UK tends to have an approach of a combination of acts, such as the Terrorism Act 2006 and public order laws, in overseeing national security threats.

#### 4.0 Importance of Resolving the Issues Regarding the Malaysian Legal Framework

Malaysia's Federal Constitution guarantees personal liberty under Article 5(1)<sup>49</sup>, yet unresolved issues in its legal framework undermine this right. Delays in informing individuals of the grounds of arrest and restricted access to legal counsel contribute to procedural unfairness. In contrast, the UK's Police and Criminal Evidence Act 1984 (PACE) offers comprehensive safeguards, including detailed codes of practice, ensuring transparency and consistency.<sup>50</sup> Adopting similar measures in Malaysia would enhance legal certainty and protect individuals' rights. Addressing these shortcomings in Malaysia would promote fairness and align its framework with international standards, such as the International Covenant on Civil and Political Rights (ICCPR).<sup>51</sup> Unresolved legal issues also disproportionately affect vulnerable groups, including women, children, and marginalized communities.

The UK's structured safeguards, such as appropriate adults during questioning, ensure equitable treatment, a model Malaysia could follow. Modern challenges, including digital evidence and protests, demand dynamic legal frameworks. Malaysia must evolve its laws to meet these challenges while fostering public trust and improving its international reputation through compliance with global human rights standards.<sup>52</sup>

The requirement under Section 28(1) of the CPC<sup>53</sup> to **present an arrested individual before a Magistrate** without unnecessary delay and within 24 hours (excluding travel time) is a cornerstone of judicial oversight. However, ambiguities in interpreting terms like "unnecessary delay" and "travel time" have led to inconsistent practices, often resulting in prolonged detentions that undermine constitutional rights under Article 5(4) of the FC.<sup>52</sup> Cases like *Ooi Ah Phua v Officer-in-Charge of Criminal (55)Investigations*<sup>54</sup> highlight the implications of such inconsistencies. In this case, the Federal Court found that detention beyond the statutory period without sufficient justification infringed upon the individual's right to liberty. This judgment underscores the need for strict adherence to procedural timelines to prevent abuses of power by law enforcement and ensure timely judicial intervention.

While logistical challenges, such as public holidays or transporting suspects from remote areas, are valid concerns, they must not be used as blanket justifications for delays. Clear guidelines on calculating travel time and defining "necessary" delays are essential to avoid arbitrary detentions. Moreover, instituting oversight mechanisms, such as mandatory documentation of delays and requiring Magistrates to scrutinise their validity, can reinforce compliance with Section 28(1).<sup>56</sup> Addressing these issues is crucial to upholding the rule of law, safeguarding personal liberty, and maintaining public trust in Malaysia's criminal justice system.



Next is the importance of resolving issues regarding **Informing Arrested Persons of Reasons for Arrest** in Malaysia. In Malaysia, individuals have key rights during a police arrest, including the right to be informed of the grounds of arrest.<sup>57</sup> The requirement under Section 28A(1) of the Criminal Procedure Code (CPC) mandates that an arrested person must be informed of the reasons for their arrest "as soon as may be." While this provision aligns with Article 5 of the Federal Constitution, its vague phrasing has drawn criticism for enabling potential misuse by law enforcement.<sup>58</sup> If police treat the timing requirement leniently, it could lead to violations of personal liberties, raising concerns about the balance between safeguarding individual rights and addressing national security concerns. In *Abdul Rahman v Tan Jo Koh*<sup>59</sup> the English House of Lords emphasised that failure to inform a person of the grounds for arrest immediately renders the detention unlawful, amounting to false imprisonment. Similarly, in *Re PE Long @ Jimmy & Ors v Menteri Hal Ehwal Dalam Negeri Malaysia & Ors*, the court highlighted the necessity of this right to provide sufficient information for the accused to prepare a defence. These cases showcase the fundamental role of timely disclosure in ensuring procedural fairness and preventing arbitrary detention.

Resolving the vagueness in Section 28A(1) requires clearer statutory language that explicitly defines the timeframe for informing individuals of the grounds for their arrest. Additionally, strict oversight mechanisms, such as requiring police to document and justify any delays, could enhance accountability. By addressing these issues, Malaysia can reinforce the procedural safeguards necessary to uphold individual rights, maintain the rule of law, and foster public trust in its criminal justice system.

Moving on to the importance of resolving the issues, we continue to the third issue, which is **Procedural Laws**

**Regarding Delaying the Accused Person from Legal Counsel.** Under Section 28A(6) of the Criminal Procedure Code (CPC), the police may delay a suspect's access to legal counsel if they believe it could interfere with investigations, lead to evidence tampering, or jeopardise law enforcement operations.<sup>60</sup> While this provision aims to balance investigative needs with procedural fairness, it raises concerns about potential misuse, as it gives law enforcement wide discretion without requiring judicial oversight.<sup>61</sup> This can undermine the constitutional guarantee under **Article 5(3)** of the Federal Constitution, which ensures the right to legal representation.

In *Chong Fook Kam & Ors v Public Prosecutor* [1970]<sup>62</sup> The Privy Council underscored the need for police to respect detainees' rights, including access to legal counsel. The court held that while denying this right may be justified in exceptional cases, such actions must be documented and subject to strict scrutiny. Without adequate safeguards, the potential for abuse of power, coercion during interrogations, or the recording of unfair statements increases significantly.<sup>63</sup> Addressing these gaps requires legislative reforms mandating judicial approval before delaying access to counsel. Furthermore, police should provide detailed reasoning, supported by documented evidence, to justify such delays. Oversight mechanisms, such as internal audits and independent reviews, should also be established to prevent arbitrary denials. Resolving these procedural ambiguities ensures that law enforcement actions do not compromise the fairness of legal processes while upholding constitutional safeguards. Strengthening this world boosts public trust in Malaysia's criminal justice system and reinforces the principle of equality before the law.

The lack of clarity and procedural safeguards in Malaysia's legal framework regarding the **Legitimate Restriction to Deny the Right of an Arrested Person to Counsel** under Section 28A(8) of the

Criminal Procedure Code (CPC) raises significant concerns. The provision introduces a subjective standard of "reasonable belief," which heavily relies on the discretion of police officers. This latitude increases the potential for abuse, undermining the constitutional guarantee under Article 5(3) of the Federal Constitution<sup>64</sup>, which emphasises the right to legal representation. Resolving these issues is vital to ensure that restrictions are applied only in genuine cases where there is a legitimate threat to evidence, public safety, or the investigation process. The absence of a prescribed timeframe for denying access to legal counsel exacerbates this issue.

While Section 38 of the Interpretation Acts<sup>65</sup> mandates actions to be carried out "with all convenient speed," this vague standard leaves room for delays that may compromise the fairness of investigations. Establishing clear procedural laws to define the permissible duration for such denial and requiring written certification from senior police officers could help address this gap. This would enhance accountability and prevent arbitrary or prolonged denial of rights.

Moreover, the lack of judicial oversight during the period of denial further weakens safeguards against misuse. Introducing mechanisms that mandate court approval for extended restrictions or require detailed documentation justifying the denial would ensure compliance with due process. Such reforms would also bolster public confidence in the justice system by ensuring that limitations on fundamental rights are necessary, proportionate, and transparently applied.<sup>66</sup> Finally, resolving these issues is crucial to maintaining the balance between law enforcement's duty to investigate crimes effectively and the protection of individual liberties. Clear legal standards and procedural oversight would reduce the risk of police overreach, strengthen the rule of law, and align the CPC with constitutional guarantees, thereby

enhancing the overall integrity of Malaysia's criminal justice system.

Last but not least, it is important to resolve issues regarding the **lack of privacy during legal consultations in Malaysia**. For starters, the lack of privacy during legal consultations under Section 28A(5) of the Criminal Procedure Code (CPC) poses a serious challenge to upholding the constitutional rights of arrested individuals. While the provision allows consultations to occur "within sight of a police officer, though not within hearing," the presence of law enforcement can intimidate detainees and hinder open communication with their legal counsel. This diminishes the principle of confidentiality, a cornerstone of effective legal representation and a fair trial.

The principle of confidentiality in lawyer-client communication is critical for safeguarding fair trial rights, as emphasised in *Lee Kwan Woh v Public Prosecutor*<sup>67</sup>. The court in this case affirmed that the right to legal counsel must be meaningful, allowing for uninhibited communication to prepare an adequate defence. Without privacy, consultations become superficial, depriving individuals of their ability to exercise their constitutional rights under Article 5(3) of the Federal Constitution.<sup>68</sup>

To address this issue, stricter procedural safeguards and oversight mechanisms must be implemented. Police presence during consultations should be justified and documented, with clear limitations to prevent misuse. Furthermore, amendments to the CPC could explicitly mandate private consultations, ensuring detainees can communicate freely and confidentially with their counsel. Resolving this issue would not only strengthen the integrity of Malaysia's criminal justice system but also ensure compliance with constitutional guarantees and principles of justice. To put it into perspective and conclusion, fixing the issues in Malaysia's Criminal Procedure Code (CPC) is important to protect the rights of people who are arrested. Problems like unclear

rules about informing suspects of why they're arrested and delaying their access to a lawyer can lead to unfair treatment.<sup>69</sup> Making the laws clearer, adding more checks, and ensuring private legal consultations will help make sure that the system is fair and respects people's rights. These changes will help Malaysia's legal system follow international standards, protect personal freedoms, and build trust in the justice system.

## 5.0 Conclusion

This study has established three four objectives, which are to analyze the provisions under **Section 28A of the CPC**<sup>70</sup> concerning the rights of arrested persons, to compare these provisions with the UK's PACE and its Codes of Practice, to identify the strengths, weaknesses, and gaps in Malaysia's framework; and finally, to propose recommendations for enhancing the protection of arrested individuals in Malaysia.

The findings for the first objective are reflected through the analysis of Section 28A of the Criminal Procedure Code (CPC) through cases demonstrating its pivotal role in safeguarding detainees' rights and ensuring procedural fairness. For instance, in *PP v Phee Boon Poh*,<sup>71</sup> non-compliance with Section 28A led to constitutional violations and the invalidation of judicial actions, highlighting the consequences of neglecting procedural safeguards. Conversely, *Profusion Petroleum Sdn Bhd*<sup>72</sup> and *Wong Chee Wooi v Lembaga Pencegahan Jenayah & Ors*<sup>73</sup> illustrated compliance, with detainees informed of their rights and proper procedures followed, thereby legitimising law enforcement actions. These cases collectively underline that adherence to Section 28A protects individual rights and strengthens the integrity and public confidence in Malaysia's criminal justice system.

However, the practical enforcement of these rights often encounters challenges.

The challenges surrounding Section 28A of the CPC stem from its vague and inconsistent language, leading to potential violations of arrested persons' rights. The term "unnecessary delay" is subjective, allowing for varying interpretations, which can lead to prolonged detentions beyond the 24-hour period prescribed by law. Similarly, the phrase "as soon as may be" in informing detainees of the reasons for their arrest is unclear, potentially undermining their constitutional rights. **Section 28A(6)**<sup>74</sup> raises concerns about the denial of legal counsel, as it permits police to restrict access to a lawyer under broad circumstances, risking abuse. The lack of detailed procedural guidelines on denying contact with relatives or friends, as well as the ambiguous interpretation of "reasonable time" for consulting a lawyer, also creates opportunities for potential misuse.

In regard to the second objective, this study demonstrates that Malaysia's legal framework for the rights of arrested individuals, while influenced by common law principles, differs from the United Kingdom's approach under the Police and Criminal Evidence Act 1984 (PACE) and its Codes of Practice. The UK's statutory framework provides more detailed and structured procedural safeguards, which include explicit provisions for detainees' rights to legal representation, interpreters, and protections for vulnerable individuals. In contrast, Malaysia's laws, primarily governed by the Criminal Procedure Code (CPC) and the Federal Constitution, provide fundamental protections but lack the same level of statutory detail and enforcement mechanisms seen in the UK.

The findings for the third objective show that while Malaysia's framework includes significant protections, it also has notable weaknesses and gaps that hinder the effective safeguarding of personal liberties. Issues such as delays in informing arrested individuals of the reasons for their arrest, restrictions on access to legal counsel, and the lack of privacy during legal consultations compromise the fairness of

the legal process. The discretionary powers granted to the police under **Sections 28A(6) and 28A(8)<sup>75</sup> of the CPC** allow for the denial of legal representation without clear procedural safeguards, increasing the risk of arbitrary detention. Additionally, the broad interpretation of terms such as "unnecessary delay" in **Section 28(1)<sup>76</sup>** has led to prolonged detentions beyond constitutional limits, as seen in cases like *Ooi Ah Phua v Officer-in-Charge of Criminal Investigations*.<sup>77</sup> These gaps disproportionately affect vulnerable groups, including women, children, and marginalised communities, highlighting the urgent need for legal reform.

In regard to the fourth objective, the study recommends several reforms to enhance the protection of arrested individuals in Malaysia. First, clearer statutory language should be introduced in the CPC to define critical terms such as "as soon as may be" under Section 28A(1) and "unnecessary delay" under Section 28(1), ensuring consistency in enforcement. Second, judicial oversight should be strengthened to prevent the arbitrary denial of legal counsel, requiring police to provide documented justification and seek court approval for delays. Third, Malaysia should adopt specific procedural safeguards similar to the UK's requirement for "appropriate adults" during questioning, particularly for vulnerable detainees. Fourth, privacy protections for lawyer-client consultations should be reinforced by limiting police presence and ensuring detainees can communicate freely without intimidation. Lastly, oversight mechanisms such as independent reviews and internal audits should be implemented to prevent abuse of discretionary powers.

In summary, this study highlights the need for reform in Malaysia's legal framework to better protect the rights of arrested individuals. By addressing the identified gaps and drawing on international best practices, particularly the UK's approach, Malaysia can strengthen its justice system, promote fairness, and ensure

that detainees' rights are upheld more effectively.

## NOTES

1. Article 5(4) of the Federal Constitution
2. Section 28A of the Criminal Procedure Code
3. United Kingdom's Police and Criminal Evidence Act 1984 (PACE)
4. PACE Code C 2023
5. [2024] MLJU 1985
6. [2022] CLJU 1000
7. [2021] MLJU 1480
8. [2021] 8 CLJ 127
9. [2018] 3 CLJ 784
10. Section 28(1) Of the Criminal Procedure Code
11. *Ooi Ah Phua v Officer-in-Charge of Criminal Investigation*, Kedah/Perlis [1975] 2 MLJ 198.
12. Article 5 of the Federal Constitution states that, "No person shall be deprived of his life or personal liberty, save in accordance with law" and also 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 be defended by a legal practitioner of his choice."
13. Article 5(3) of the Federal Constitution provides that, "An arrested person must be informed as soon as may be of the grounds of his arrest".
14. *Abdul Rahman v Tan Jo Koh* [1968] 1 MLJ 205
15. *Re PE Long @ Jimmy & Ors v Menteri Hal Ehwal Dalam Negeri Malaysia & Ors* [1976] 2 MLJ 133.
16. Section 28A(6) United Kingdom's Police and Criminal Evidence Act 1984 (PACE)
17. [1970] 2 MLJ 219
18. Section 28A(8) Of the Criminal Procedure Code

19. Section 28A(8) of the Criminal Procedure Code
20. *PP v Mah Chuen Lim & Ors* [1975] 1 MLJ 95.
21. *Ooi Ah Phuan v Officer in Charge, Criminal Investigation s, Kedah/Perlis* 1975 2MLJ 198 FC
22. *Ramli b Salleh v Inspector. Yahya Hashim* [1973] 1 MLJ 54
23. *Hashim Bin Saud v Yahya Bin Hashim & Anor* [1977] 2 MLJ 116 (FC)
24. *Ooi Ah Phuan v Officer in Charge, Criminal Investigation s, Kedah/Perlis* 1975 2MLJ 198 FC
25. Act 388
26. Refer to Section 58(1) of the Police and Criminal Evidence Act 1984 (PACE) and Paragraph 6.8 of the Code of Practice for the Identification of Persons by Police Officers.
27. Section 58(6) of PACE and further elaborated in Code C of the PACE Codes of Practice.
28. Section 28A(5) Criminal Procedure Code.
29. *Lee Kwan Woh v Public Prosecutor* [2009] 5 MLJ 301
30. *Sakhnovskiy v Russia* [2010] ECHR 21272/03
31. Section 58 of PACE
32. Article 5(1) No person shall be deprived of his life or personal liberty in accordance with law.
33. Article 9; No one shall be subjected to arbitrary arrest, detention or exile.
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43. [2011] 1 CR APP R 24
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45. Section 30(1A). Subsection (1A) applies where a person is, at any place other than a police station – (1A)The person must be taken by a constable to a police station as soon as practicable after the arrest.
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69. Ibid., 2

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