

Article 5 Liberty of the Person

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(1) No person will be deprived of his life or personal liberty save in accordance with law.

(2) Where complaint is made to a High Court or any judge that a person is being unlawfully detained the court will inquire into the complaint and unless satisfied that the detention is lawful will order his to be produced before the court and release him.

(3) Where a person is arrested he will be informed as soon as may be the grounds of his arrest and will be allowed to consult and be defended by a legal practitioner of his choice.

(4) Where a person is arrested and not released he will without unreasonable delay and in any case within twenty-four hours be produced before a magistrate and will not be further detained in custody without the magistrates authority.

Provided that this Clause will not apply to the arrest or detention of any person under the existing law relating to restricted residence, and all the provisions of the Clause will be deemed to have an integral part of this Article since Merdeka Day:

Provided further that in its application to a person, other than a citizen, who is arrested or detained under the law relating to immigration, this Clause will be read as if there were substituted for the words "without unreasonable delay, and in any case within twenty-four hours" the words "within fourteen days".

And provided further that in the case of an arrest for an offence which is triable by Syariah court, references in this Clause to a magistrate will be construed as including references to a judge of a Syariah court

(5) Clauses (3) and (4) do not apply to an enemy alien.

Even though Article 5 gives physical freedom to an individual, this provision does not give the right to an individual to leave the country. Besides the Malaysian government can restrict an individual from leaving Malaysia if he is accused under criminal law.

Article 5(1) allows Parliament to make laws containing the death penalty punishment. As long as there is law containing the death penalty punishment taking life is valid under the Federal Constitution.

Article 5(2) if an individual has been unlawfully detained the individual may complaint to the High Court or any judge of the High Court and the court must investigate the complaint and unless the court is satisfied that the detention was lawful the court must released the individual through a writ of habeas corpus.

When a person complaints that he was unlawfully detained the burden of proof is on the shoulders on the person or body who has detained him. The court will look at the detention order and determined whether all the conditions are followed. Then the burden of proof shifts to the detainee to proof that he was detained with malafide.

Detention powers of the Immigration are only temporary until the time to transfer the detainee outside the country. If this is not done, continuous detention is illegal.