

# Lesson 11 & 12: Fundamental Liberties

- Part II, Federal Constitution
- Rights of the individuals
- 9 provisions (Art. 5–13)

## Article 5: Liberty of the person

1. No person may be deprived of his life or personal liberty save in accordance with law (i.e, unless the law allows it to be).

2. A person unlawfully detained may apply to the court for a writ of habeas corpus.
3. A person arrested shall be informed as soon as may be of the grounds of his arrest.
4. A person arrested shall be allowed to consult his own lawyer.
5. A person arrested shall be allowed to be defended by his own lawyer.

**6. A person arrested shall be produced before a magistrate within 24 hours. He may not be further detained without an extension of detention time by a magistrate (maximum 14 days).**

**Exception:**

- 1. Detention under immigration law – may be detained for up to 14 days.**
- 2. Enemy Alien**

# Article 6: Prohibition of Slavery and Force Labour

1. No person shall be held in slavery.
2. All forms of force labour are prohibited.

## Exceptions:

- (1) Compulsory service for national purposes – eg. military service
- (2) Work incidental to serving a sentence of imprisonment
- (3) Transfer of employees from one public authority to another public authority where functions of the first public authority are transferred to the second.

## Article 7: Protection against retrospective criminal laws and repeated trials

7(1): No person may be punished for an act which was not punishable by law when it was done.

No person may suffer greater punishment for an offence than was prescribed by law at the time it was committed.

7(2) No person may be tried again for the same offence after his conviction or acquittal unless the conviction/acquittal is quashed (set aside) and a retrial is ordered.

## Explanation to Article 7(1)

1. A person cannot be punished for something which at the time when it was done was not an offence.

Example: If a law is passed to make it illegal to vape, a person vaping before the law is passed cannot be punished.

【This is only fair. Because he would have chosen to behave differently knowing that his action was an offence】

2. If the punishment for a crime is increased, a person who committed the crime before the punishment was increased cannot be given that increased punishment.

【This is to protect a person against double jeopardy and to disallow the power of prosecution from being used as a tool for oppression】

## Article 8: Equality

All persons are equal before the law and entitled to its equal protection.

There are a number of exceptions expressly allowed under the Constitution.

### Examples of exception:

- (i) Special position of Malays & natives of Sabah and Sarawak
- (ii) Personal law – eg. Law governing marriage.

- (iii) Religious group restricting their employment to persons of the same religion.**
- (iv) Protection of aboriginal peoples, eg reservation of land; quota in the public service.**
- (v) A state authority restricting only residence of its state is qualified for election/appointment.**
- (vi) Restricting enlistment in the Malay Regiment to Malays.**



## **Article 9: Prohibition of Banishment and Freedom of Movement**

- 1. No citizen shall be banished or excluded from the country.**
- 2. Every citizen has the right to move freely throughout the country and to reside in any place in the country.**

## **Restrictions to Freedom of Movement:**

- (i) Freedom of movement can be restricted by the immigration laws of East Malaysia.**

**When Sabah and Sarawak agreed to form Malaysia with Malaya and Singapore in 1963, all parties agreed to accord certain safeguards and special interests to Sabah and Sarawak. Sabah and Sarawak have a greater degree of autonomy than other states over entry, travel and immigration from West Malaysia.**

- (ii) Freedom of movement can be restricted by law for the purpose of:**
  - (i) national security;**
  - (ii) public order;**
  - (iii) public health; or**
  - (iv) punishment of offenders.**

# Article 10: Freedom of Speech, Assembly and Association

1. Every citizen has the right to freedom of speech and expression.

## Restrictions:

Parliament may by law impose restrictions on the right to freedom of speech and expression under the following circumstances:

1. in the interest of national security
2. in the interest of public order
3. in the interest of friendly relations with other countries

4. in the interest of morality
5. to protect the privileges of parliament
6. against contempt of court
7. against defamation
8. against incitement to an offence
9. to prohibit the questioning of  
“sensitive issues”

# **“Sensitive Issues”**

- 1. Citizenship**
- 2. National language**
- 3. The use of other languages for non-official purposes**
- 4. Special position of the Malays and the natives of Sabah & Sarawak**
- 5. The protection of the legitimate interest of other communities**
- 6. Sovereignty of the Rulers**

**2. Every citizen has the right to assemble peaceably.**

**Restrictions:**

**Parliament may by law impose restrictions on this right in the interest of:**

- 1. national security**
- 2. public order**

### **3. Every citizen has the right to form associations**

#### **Restrictions:**

**Parliament may by law impose restrictions on this right under the following circumstances:**

- 1. in the interest of national security**
- 2. in the interest of public order**
- 3. in the interest of morality**
- 4. by law relating to labour**
- 5. by law relating to education**



# Article 11 : Freedom of Religion

1. Every citizen has the right to profess and practise his religion

## Restrictions:

- (1) Propagation of other religion among Muslims – See: Art.11(4)
- (2) Act contrary to public order, public health and morality

## **2. Every religious group has the right :**

- (i) to manage its own religious affairs;**
- (ii) to establish and maintain institutions for religious or charitable purposes;**
- (iii) to acquire , own and administer property**

# Article 12: Rights in respect of Education

1. There shall be no discrimination against citizen on the grounds of religion, race, descent or place of birth in the administration of public education institution particularly the admission of students or the payments of fees.
2. Every religious group has the right to establish and maintain institutions for the education of their children.

3. No person shall be required to take part in any ceremony or act of worship of a religion other than his own.
4. The religion of a person under 18 shall be decided by his parent or guardian.

# Article 13: Rights to Property

1. No person shall be deprived of property save in accordance with law.
2. No compulsory acquisition of property without adequate compensation.