

# REMEDIES FOR ENFORCEMENT OF FUNDAMENTAL RIGHTS AND THE PUBLIC SAFETY IN MALAYSIA: KEEP STRIKING THE RIGHT BALANCE

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**Abstract**—This article aims to examine the provision of remedies for enforcement of fundamental rights under Paragraph 1 of the Schedule to the Courts of Judicature Act 1964 (know as ‘Para 1’) and the public safety in Malaysia. Currently, the provision of Para 1 is provided under an ordinary statute law. Therefore, for full protection of fundamental rights, the provision of Para 1 should be incorporated in the Federal Constitution of Malaysia. However, under Para 1 power the High Courts of Malaysia enjoy large remedial powers without any limitation. Hence, before such steps were used up the factor of public safety should be brought into account, without which the consequence of too wide of powers in a fundamental rights’ claim would affect the public safety in Malaysia. A possibility to resolve this dilemma could be amending the provision of Para 1 to include reasonable restrictions in order to create balance between the rights to seek remedies and public safety.

**Index Terms**—remedies, fundamental rights, enforcement of rights, public safety.

## I. INTRODUCTION

The provision of remedies for enforcement of fundamental rights plays an important role in preserving and defending the fundamental rights in the Constitution. Therefore, the said provision is better provided for under the Constitution than under an ordinary legislation to ensure effectiveness in preserving fundamental rights. Nevertheless, before such steps were taken up the factor of public safety should be brought into account on the ground that such large remedial powers were enacted without any limitation.

The objectives of this article are to examine the problems that arise due to the wide powers under provision of Para 1 and the importance of reasonable restrictions to be incorporated in the said provision. This study should be carried out in order to identify the problems encountered and recommend a solution to these problems.

## II. BACKGROUND OF RESEARCH

In Malaysia, the right to seek remedies for enforcement of fundamental rights are provided for under Paragraph 1 of the Schedule to the Courts of Judicature Act 1964 (“the Para 1”) which read together with Section 25 (2) of the same Act. In order to guarantee more of the fundamental rights under Part II of the Federal Constitution of Malaysia, it is submitted that the provision of remedies for enforcement of fundamental rights should be incorporated into the Federal Constitution of Malaysia. Nevertheless, before such steps were used up the factor of public safety should be taken into account. This is because Paragraph 1 empowers the High Court to issue to any person or authority directions, orders or writs, including writs

of the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any others, for the enforcement of the rights conferred by Part II of the Federal Constitution of Malaysia. This means that the High Courts are free to devise the writ and mould the relief, according to the circumstances of each specific case. The High Courts thus enjoy large remedial powers. This study examined all the troubles that come up as a result of a too wide of powers in fundamental rights’ claim to a position that jeopardizes public safety.

## III. RESEARCH METHODOLOGY

This research will be carried out using doctrinal studies. Since it requires the subject field of the doctrinal approach that emphasises qualitative descriptive study thus it requires a comprehensive review. With views to the data collected, it will be posted out by means of library research at the local law libraries to read and examine primary sources. Furthermore, fieldwork using structured interviews with a standard set of questions will also be taken away to obtain the relevant information.

## IV. OBJECTIVES OF RESEARCH

The aims of the research are to identify all problems that arise which will threaten public safety due to the unlimited wide powers under the provision of remedies for enforcement of fundamental rights in Para 1 and propose practical solutions to the problems that exist.

## V. PROBLEM STATEMENT

Under Para 1 power, the High Courts are free to devise the writ and mould the relief, according to the circumstances of each specific case. The High Courts thus enjoy large remedial powers. The troubles come up when there is a clash between preservation of public safety and fundamental rights claims, the fundamental rights claims will prevail. This scenario is due to the absence of restrictions imposed on the provision of remedies for the enforcement of fundamental rights in Malaysia. Therefore, as a result of a too wide of powers in fundamental rights’ claim certainly will jeopardize public safety in Malaysia.

## VI. HYPOTHESES/FINDINGS

Few findings were developed from the research. First, where there is the clash between public safety and claims of fundamental rights, the fundamental rights will prevail. Second, the powers to grant remedies when fundamental rights under the Federal Constitution is infringed are very wide under the

Para 1. Third, no restriction imposed on the wide powers under Para 1 would affect the public safety.

#### VII. RECOMMENDATION

It is urged that the provision of remedies for enforcement of fundamental rights under Para 1 should be amended to include reasonable restrictions in order to make a balance between the right to seek remedies and public safety.

#### VIII. CONCLUSION

Given the Malaysia is a multiracial state, the question of the rights and public safety is really important to be poised to guarantee peace and prosperity of the nation. Therefore, the recommendations made should be dealt with promptly. It should be enforced in Malaysia so that both human rights and public safety can be balanced and kept discreet.

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