

THE RIGHT OF PRIVATE DEFENCE OF PERSON
A COMPARATIVE STUDY OF ENGLISH,
MALAYSIAN AND ISLAMIC LAWS

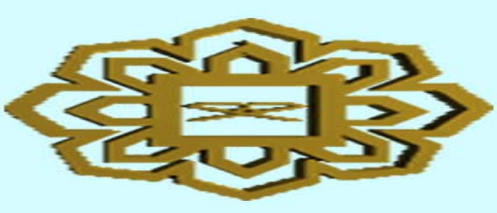
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**THE RIGHT OF PRIVATE DEFENCE OF PERSON
A COMPARATIVE STUDY OF ENGLISH,
MALAYSIAN AND ISLAMIC LAWS**

**THIS DISSERTATION IS SUBMITTED TO FULFIL
THE PARTIAL REQUIREMENTS FOR THE DEGREE
OF MASTER OF COMPARATIVE LAWS**

**BY
HUSNA BINTI FAUZI
KULLIYAH OF LAWS
INTERNATIONAL ISLAMIC UNIVERSITY
PETALING JAYA
SELANGOR DARUL EHSAN.**

1993

إِن أُرِيدُ إِلَّا الْإِصْلَاحَ مَا اسْتَطَعْتُ
وَمَا تَوْفِيقِي إِلَّا بِاللَّهِ عَلَيْهِ تَوَكَّلْتُ وَإِلَيْهِ أُنِيبُ

*"I only desire (your) betterment To the best of my power
And my success (in my task) Can only come from
God (Allah) In Him I thrust And unto Him I look"*

-Surah Hud (11):88

Specially dedicated to my parents:

FAUZI HJ. AWANG
AMINAH HJ. YAACOB

-For their love and encouragement
each step along the way.

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بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ

IN THE NAME OF ALLAH

MOST GRACIOUS, MOST MERCIFUL

الحمد لله رب العالمين والصلاة والسلام على سيدنا
ومولاتنا محمد سيد المرسلين وعلى آله وصحبه أجمعين
في كل لمحة ونفس عندما وسعه علم الله

To Allah I offer praise and to Him I address my prayer, who by His Mercy gave me the strength to complete this work.

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وصلى الله على سيدنا ومولانا محمد وعلى آله وصحبه

في كل لحظة ونفس عند ما وسعه علم الله

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ABSTRACT

The right to defend oneself is said to be the first rule of criminal law. The instinct of self-help is ingrained in man, in common with all other living creatures.

This right is essentially an important one, but it is excisable only when the circumstances fully justified the discharge of such right; otherwise the society will be in a state of chaos if man is allowed to take the law into his own hands unconditioned.

This study attempts to provide the general law relating to private defence of person. The scope of this study covers the English, Malaysian and Islamic laws, and it is hoped that this approach will give a more coherent view of the subject.

The first chapter briefly outlines the conceptual background on the subject.

In the second chapter, the discussion focuses on the right of self-defence under the English law. The scope of the defence, the relationship between the common law and statutory defences, and the prevention of crime are discussed.

The third chapter highlights the provisions of the Malaysian Penal Code governing the right of private defence of body.

The fourth chapter deals with the concept of self-defence in the Islamic law. The scope, the restrictions and the different opinions of the Muslim jurists relating to right to defend are discussed.

In the fifth chapter, some accounts of the similarities and differences underlying the general principles of right of private defence of person under the three laws are briefly observed.

In the conclusion, an overview on the concept of right of private defence of person and the right to life is presented.

Finally, I assume full responsibility for the errors and shortcomings undoubtedly exist in this work, due to my limited knowledge and means.

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ABBREVIATIONS

A.C.	Appeal Cases
All E.R.	All England Law Reports
A.I.R.	All Indian Reports
Cal.	Calcutta
C.J.	Chief Justice
C.L.J.	Cambridge Law Journal
C.L.R.	Commonwealth Law Reports
Cox.C.C.	Cox's Criminal Cases
Cr.App.R.	Criminal Appeal Reports
Crim.L.R.	Criminal Law Review
D.P.P.	Deputy Public Prosecutor
Harv.L.R.	Harvard Law Review
I.L.R.	Indian Law Reports
Ker.	Kerala
Mad.	Madras
M.L.J.	Malayan Law Journal

M.L.R.	Modern Law Review
N.L.R.	Nigeria Law Reports
N.I.	Northern Ireland Law Reports
P.C.	Privy Council
P.P.	Public Prosecutor
Ranq.	Rangoon
R.	Regina
S.C.(J.)	Session Cases (Judiciary Reports)
S.L.R.	Straits Law Reports
S.C.	Supreme Court
V.R.	Victorian Reports

CHAPTER I

THE CONCEPTUAL BACKGROUND

CHAPTER I

THE CONCEPTUAL BACKGROUND

1.1. Introduction

Self-defence¹ is regarded as the nature's oldest law. The instinct to protect oneself is an inborn tendency which is based on the law of necessity of self preservation.

Where a man strikes a blow at another, nature prompts the party struck to resist and in doing so he is justified in using such degree of force necessary to meet the situation.

1.2. The Right to Life

Life is the immediate gift of God, a right inherent by nature in every individual, and it begins in

¹ The terms 'self-defence' and 'private defence' are interchangeably used in this study.