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The Perpetual Investigative State: A Critique of the Practice of Chain Remand and the Need for Reform in Malaysia

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Introduction

While Article 9 of the International Covenant on Civil and Political Rights (ICCPR)[1] establishes a global standard for the right to liberty, its legal efficacy within the Malaysian domestic framework remains circumscribed. As Malaysia has not, yet, acceded or ratified the covenant, it is not a signatory to the ICCPR, and thus the covenant does not impose direct treaty obligations. This creates a gap between international ideals and local practice, for the ICCPR's provisions are generally viewed as persuasive international norms rather than binding law, thus leaving legal protections against arbitrary detention largely reliant upon the interpretation of domestic law, which are significantly more limited under the Malaysian jurisdiction rather than the broader safeguards envisioned by the international community.

Under the Malaysian adversarial system, and consistent with most other commonwealth jurisdiction, a preliminary stage requirement exists, where before an arrested individual is charged for an offence in court, law enforcement such as the police will conduct thorough investigation and collect complete evidence to be used by the Prosecutions in trial. The judicial threshold for such proceedings was clarified by the Court of Appeal in ***Ghasem***, that there must be sufficient direct evidence or circumstantial evidence to establish that the accused's conduct amounts to a breach of a law[2] for only then, will the court perform its mandatory role of assessing the evidence provided by the Prosecutor and the Investigating Officer[3] to determine

[1] Article 9, International Covenant on Civil and Political Rights (ICCPR)
[2] *Ghasem Gharezadehsharbiani Hassan v Public Prosecutor* [2014] MLRAU 256
[3] *Public Prosecutor v Mohd Radzi Abu Bakar* [2005] 2 MLRA 590

whether a case can be established.

However, an Investigating Officer will generally not be able to complete his or her investigation within the day of arrest itself. Thus, in order to proceed with the investigation, the Investigating Officer will have to obtain an order of remand from the Magistrate's Court within 24 hours pursuant to Section 117 of the Criminal Procedure Code[4] ("CPC") where it limits the accused's right to liberty of movement for a period not exceeding 14 days. If the investigation still cannot be completed within the time frame granted, the accused will, in an ideal scenario, either be released on bail or walk free without any conditions.

It is unfortunate to note however, there have been various incidents where police authorities have misused the relevant provisions to restrict an individual's right to liberty of movement indefinitely, such as through subjecting an individual through a perpetual investigative state that bypasses the statutory limits on remand. The Malaysian Bar has described this practice as successive remand, or more commonly known as chain remand[5]. This review will therefore discuss the existing legal framework and how it consists of loopholes which allow for the misuse of power to occur in the first part; and in the second part, consider the potential reform which could be made to address the issues of chain remand.

The Big Why: Policy Justifications for Chain Remand

The practice of chain remand in this country is closely linked to the authorities' policy concerns. Investigating officers are often unable to complete their case files within the prescribed time limits. Therefore, police who intend to uncover the full truth may use this form of practice as a way to extend the investigation.

[4] Criminal Procedure Code (Revised 1999), s 117
[5] James Anthony Froude, 'Legalising Torture' (The Malaysian Bar, 2003) https://www.malaysianbar.org.my accessed 14 April 2026.

This is supported by the modus operandi argument mentioned by Samsudin[6], where chain remand helps authorities determine if an arrested individual is linked to other similar crimes. For example, a person recently arrested for robbery may have been involved in a series of thefts or burglaries within the same area that have yet to be solved.

Indirectly, chain remand contributes to public confidence in state authorities for it gives the perception that law enforcement is actively combating the rise in crime. According to the latest index from the Department of Statistics Malaysia, crime rates have increased by 11.1% from 2023 to 2024[7]. If suspects are easily released due to the technicalities of existing legal provisions whilst crime is seen to be rising, the reputation of the authorities and enforcers will be greatly tarnished in the eyes of the public.

Two Sides of the Same Coin: Risks of Abuse and Constitutional Concerns

Notwithstanding these policy justifications, the legal framework governing remand reveals significant vulnerabilities. The case of ***PP v Datuk R. Sri Sanjeevan [2016]***[8] shows how chain remand can be used as a tool for abuse of power. While oftentimes the authorities argue that they need more time to find the truth, this case reveals how the practice of chain remand can be misused to target certain people based on political reasons or specific instructions. Even though the High Court granted a habeas corpus and ruled that his detention was unlawful under Article 5(1) of the Federal Constitution, Sanjeevan was immediately re-arrested outside the courtroom. This practice of moving a person from one charge to another the moment they are released is a tactic used to go around the law and ignore the court's decision. This practice threatens the freedom of expression. This sends a concerning message in that authorities can abuse legal procedures to effectively deprive a person of his or her rights.

[6] Ifa Sirrhu Samsudin, Ramalinggam Rajamanickam and Rohaida Nordin, 'Roles of Human Rights Bodies on Chain Remand Complaints in Malaysia' (2022) 8(1) Cogent Social Sciences 2095079 https://doi.org/10.1080/23311886.2022.2095079 accessed 14 April 2026

[7] SUARAM, Malaysia Human Rights Report 2024 (SUARAM 2025)

[8] Pramananthan Vasuthevan, '"Chain Remand" and its consequences in reality according to Malaysian Criminal Law as comparative studies' (Hatyai University, 2017)

Provisions Within the Criminal Procedure Code (CPC)

To this extent, it is necessary to understand how chain remand functions in the existing provisions. The remand application in Malaysia is governed by the Criminal Procedure Code (Act 593)[9], where the initial aim and focus is to ensure that the Police can conduct further investigations and collect sufficient evidence to assist the Public Prosecutor in trial. This process, as it stands, is regulated under Sections 28 and 117 of the CPC[10]. However, the ambiguous wordings contained within the sections makes the procedure, especially that of under Section 117 a weapon susceptible to abuse by the investigating officers. This vulnerability persists due to the absence of clear and specific provision prohibiting successive remand orders of an individual to be extended beyond the prescribed legislative limits.

The following summarised table of Section 28 and Section 117 of the CPC illustrates the procedure to remand application. Both of the aforementioned provisions state for a clear limitation on the timeline an accused should be remanded for. In particular, Section 28 of the CPC clearly states that once an individual has been arrested, he must be either released or be sent to the Magistrate's Court within 24 hours[11].

PROVISIONS IN THE CRIMINAL PROCEDURE CODE	
Section 28	Mandates the police officer to not cause any unnecessary delay in detaining a person arrested without warrant and must either release or send the arrested person to the Magistrate's Court within 24 hours as per required under Section 117.

[9] Criminal Procedure Code (Revised 1999)
[10] Mah Weng Kwai, 'Police Investigations' (Malaysian Bar, 2001) https://www.malaysianbar.org.my/article/news/press-statements/press-statements/police-investigations accessed 14 April 2026
[11] Section 28, Criminal Procedure Code

In supplement of Section 28, Section 117(2)[12] writes that an accused can be remanded with a period strictly based on the allegation of offences. For instance, if an individual is suspected of committing a light offence which is punishable with imprisonment of less than 14 years, the detention authorised shall be not more than four days on the first application and not more than three days on the second application.

In contrast, where an individual is suspected of committing a severe offence which is punishable with imprisonment of more than 14 years, the detention authorised shall not be more than seven days on the first application, and a further period not exceeding seven days upon the second application. In simpler words, an accused's right to liberty of movement in remand can be restricted from 4 up to 14 days, depending on the severity of the case.

PROVISIONS IN THE CRIMINAL PROCEDURE CODE	
Section 117	Investigations of an arrested person which cannot be completed within 24 hours fixed by Section 28 and where there are grounds that the accusation or information is well founded then the police officer shall transmit the Magistrate a copy of the entries in the diary related to the case and produce the accused before the Magistrate. If the offence could be punished with conviction for up to 14 years the accused can be remanded for up to 7 days; and for offence that could be punished with imprisonment of 14 years and above or death sentence, the accused can be remanded for up to 14 days.

However, as understated prior, Section 117 of the CPC has no sufficient safeguards in place to restrict how long an accused can be placed into remand, only the required procedural compliance as outlined in the subsections of Section 117 of the CPC.

[12] Section 117(2), Criminal Procedure Code

- Subsection (1) provides that where an investigation is unable to be completed within 24 hours, the investigating officer has to transmit to the Magistrate the entries of a diary relating to the case;

- Subsection (3) requires the investigating officer to state in the entries of the diary regarding the prior remand or any custody which the accused may have already served immediately before the application;

- Subsection (4) requires the Magistrate to take into consideration of the prior remand or any custody which the accused may have previously served prior to the current application;

- Subsection (5) allows the representations to be made by the accused himself or by a counsel appointed by the accused;

- Subsection (6) requires the Magistrate to transfer the case to another Magistrate's court or a High Court if the said case is beyond the jurisdiction of the presiding Magistrate hearing the application; and

- Subsection (7) requires the Magistrate to record down his grounds for granting such remand order before the custody of a police officer.

There is no express provision within Section 117 clarifying whether the remand process is intended to limit the deprivation of personal liberty to a specific period. This creates a procedural gap that may be exploited to undermine the constitutional rights guaranteed to individuals, as although individual remand periods are limited, the statute does not expressly prohibit successive remand applications.

In this regard, it is pertinent to refer to the Federal Constitution and understand the fundamental constitutional rights that could potentially be violated due to the procedural ambiguity left in

Section 117. Article 5(1) of the Federal Constitution[13] states that no one shall be deprived of his life or personal liberty save in accordance with law. In the case of ***Bird Dominic Jude v PP***[14], the Federal Court concluded that whether the constitutional rights of an individual are violated is dependent upon the existence of a specific law authorising such deprivation.

In the context of remand and further detention, Article 5(4) of the Federal Constitution[15] is pivotal to be considered as it provides that no person could be further detained for more than 24 hours without the Magistrate's authorisation. In ***PP v Duis Akim & Ors***[16], the High Court confirmed that the Magistrate has the authority to further detain an accused only where there are express provisions such as Section 177A and Section 295 of the CPC which confer such authority. In summary, the general principle derived from these precedents reflect that an individual's right to personal liberty can only be deprived through procedures like remand when each of the following conditions has been met:

(a) There is an express provision authorising such deprivation; and

(b) That provision expressly empowers a Magistrate the authority to issue an order for further remand or detention.

In reference to Section 117, it is an express provision which empowers the Magistrate with the authority to order a further remand if a diary entered by the investigating officer shows that more reasonable investigation is required. On plain reading therefore, this existing provision complies with all the necessary ingredients required under Articles 5(1) and (4) of the Federal Constitution, as well as constitutional principles derived from the cases of ***Bird Dominic Jude*** and ***Duis Akim*** to the momentary deprivation of the liberty to freedom of movement classified under the Federal Constitution.

However, without having clear wording to give effect to the end of that the investigation according to Section 117 at a particular period, or that the word investigation is only limited to

[13] Article 5(1), Federal Constitution
[14] *Bird Dominic Jude v PP* [2014] 4 MLRA 1
[15] Article 5(4), Federal Constitution
[16] *PP v Duis Akim & Ors* [2005] 2 CLJ 936

the earlier case and could extend to a new one, for example, a suspect who has finished his remand procedure at a police station from Town A could be transported to a police station at Town B. The investigating officer may take the opportunity to record in the diary that the accused is under investigation for a case and present it before a new Magistrate from another district, who may approve the application so long as he finds the diary entry reasonable. In addition, since the entry of the diary is only presented to the Magistrate, the defence counsel or even the suspect himself may not be able to object to the remand application properly.

Therefore, procedurally, the police may appear to be complying with the pre-requisites under Section 117 of the CPC; in substance, however, the Magistrate's authority and the accused's constitutional rights enshrined in Article 5(4) of the Federal Constitution are violated.

Fortunately, established cases like ***Lei Meng v Inspektor Wayandiana bin Abdullah & Ors***[17] show that habeas corpus exists as a remedy for those involved in unlawful remand. It was also further asserted that the court has a mandatory role to assess whether the remand application of an authority violated the rights of an accused under Article 5(2) of the Federal Constitution.

However, the recent Federal Court decision in ***Sri Sanjeevan a/l Ramakrishnan v ASP Poonnam E Keling & Ors***[18] has turned the issue on its head for it has highlighted a rather significant problem in that, the subsequent ability to seek redress for wrong detention has been curtailed. In ***Sanjeevan***, former anti-crime activist, R. Sri Sanjeevan, following his arrest under Section 3 of the **Prevention of Crime Act 1959 ('POCA 1959')**, was produced before a Magistrate for which thereafter issued a 21-day remand order and detention warrant. Mr. Sanjeevan was allowed release only after serving 16 of the 21 days following his application for habeas corpus order which was granted by the High Court of Kuala Lumpur, in acknowledgement that the detention warrant was procedurally defective under **Section 4(1)(a)** of **POCA 1959**, thus granting his immediate release. Mr. Sanjeevan had thereafter filed for subsequent civil suits for false imprisonments up to the Federal Court level, claiming that his 16-day detention was unlawful and infringed upon his liberty rights under Article 5(1) of the Federal

[17] *Lei Meng v Inspektor Wayandiana bin Abdullah & Ors* [2022] 3 MLRA 131
[18] *Sri Sanjeevan A/L Ramakrishnan v ASP Poonnam E Keling & Ors* [2025] 3 MLJ 296

Constitution. However, the Federal Court had, in applying ***Hassan bin Marsom & Ors v Mohd Hady bin Ya'akop***[19] ruled that a remand order which is wrongly applied, or applied with no reasonable cause or basis, or applied and/or issued without complying with Section 117 of the CPC can be set aside, and that the police are shielded from claims of false imprisonment because the remand order was a judicial act. This therefore, appears to have set a precedent that may indirectly result in the police and any authority with custodial power being immune from any civil claims filed by the very accused who has succeeded in his habeas corpus claim.

This rationale becomes a direct issue that could contribute to chain remand because all remand orders are filed by magistrates following Section 117; therefore in any event, the police can rely on ***Sanjeevan*** to avoid legal liability, that detention under a judicial remand order generally affords a defence of lawful authority. To this extent, the police and relevant authorities are able to restrict the freedom of movement of an individual indefinitely through chain remand, and should this rationale persist, in the development of further cases, may further result in the hindrance of ascertaining the liberty of freedom of movement. As a result, an overall reform is required to ensure that constitutional rights are protected in practice, and this assessment proposes the following measures to resolve the issue.

Reforms Proposal 1: Implementing Custody or Remand Rules

As referred to in the earlier paragraphs of this review, the UK has the **Prosecution of Offences (Custody Time Limits) Regulations 1987**[20] which limits the period an accused can be placed in detention. It is henceforth suggested that the Parliament in Malaysia consider implementing a CTLs Bill in Malaysia which will in turn provide a time limit on how long an accused can be placed in remand or detention for. However, the current provisions of the CTLs Regulations in UK provides a longer period of detention summarised in the following table:

[19] *Hassan bin Marsom & Ors v Mohd Hady bin Ya'akop* [2018] 5 MLRA 263
[20] Prosecution of Offences (Custody Time Limits) Regulations 1987

TYPES OF OFFENCES	TIME LIMITS
Summary Offences	56 days
Either Way Offences (Magistrate Stage)	56 days
Either Way Offences (Crown Court Stage)	182 days
Indictable Offences	182 days

In the UK, the CTLs operate on a system where the Crown Court hears cases involving indictable offences or either way offences that are sent from the Magistrates' Court following the accused's election for trial in the Crown Court. In contrast, the Malaysian jurisdiction operates on a system where the power to grant the order for remand lies with the Magistrate. As such, the Parliament should exercise greater care in determining the most suitable time limits that can be applied in the Malaysian jurisdiction.

Reforms Proposal 2: More Transparency of Enforcement Authorities

Based on the comprehensive article by Gomez[21] on chain remand and research by the Human Rights Committee[22], a frequent issue identified is the lack of transparency in how police officers handle their cases. As these studies show, individuals arrested by the police are often denied the opportunity to meet family members, despite Section 28A(2)(a) & (b) of the CPC[23] guaranteeing

[21] Jerald Gomez, 'Police Powers And Remand Proceedings' 2 MLJ cxxix
[22] Ifa Sirrhu Samsudin, Ramalinggam Rajamanickam and Rohaida Nordin, 'Roles of Human Rights Bodies on Chain Remand Complaints in Malaysia' (2022) 8(1) Cogent Social Sciences 2095079 https://doi.org/10.1080/23311886.2022.2095079 accessed 15 April 2026
[23] Section 28A, Criminal Procedure Code

the right to communicate with friends, relatives, or legal counsel.

In ***Tee Jun Wei lwn. Inspektor Parthiban Suntharam & Yang Lain [2021] 8 CLJ 127***[24], the court affirmed that non-compliance with Section 28A(2) does not lead to the nullity of a remand application under Section 117; instead, affected individuals must file a Habeas Corpus application. Consequently, any individual subjected to an unlawful arrest or detention is entitled to challenge the validity of their custody and seek an appropriate remedy for the infringement of their rights.

However, this remains a passive approach that doesn't truly uphold the rights of accused individuals. When a person is deprived of their personal liberty, a release that comes later than it should results in a classic 'justice delayed is justice denied' situation.

In contrast to the passive approach taken in Malaysia, the UK's Police and Criminal Evidence Act (PACE) 1984[25], as interpreted in ***R v Samuel [1988]***[26], maintains a more stringent and 'active' protection of rights. While Section 58 of PACE allows for a delay in legal access, it is explicitly restricted to exceptional circumstances where a Superintendent or senior officer believes, meeting a high threshold of proof, that communication with a lawyer will directly lead to the hindrance of an investigation.

This restrictive approach by the UK judiciary actively discourages the isolation and extension of suspects' remand without a specific, documented explanation. A similar standard could be encouraged within Malaysian institutions; specifically, the Ministry of Home Affairs (KDN) could implement a strict, mandatory Standard Operating Procedure (SOP) to be complied with by police officers when handling an accused person.

A practical solution to serve the public interest would be to strengthen this SOP during the initial stages of arrest. By ensuring that the right to communicate is fully informed and that family

[24] *Tee Jun Wei lwn. Inspektor Parthiban Suntharam & Yang Lain* [2021] 8 CLJ 127
[25] Section 58, Police and Criminal Evidence Act 1984
[26] *R v Samuel* [1988] QB 615

members are kept aware of the accused's well-being from the very start. By shifting the burden of justification onto the authorities at the moment of arrest, Malaysia could move away from a reactive system towards one that proactively safeguards personal liberty.

Reforms Proposal 3: Digitalisation Of Accused's Background into the Case Management System (E-filing)

Pursuant to Section 28 of the CPC, an investigating officer has to enter a diary with its necessary facts and reasonings, then present it to the Magistrate to explain that a remand is needed for further investigation. However, one issue which arises is that there is no limit as to what an investigating officer can write in the diary. As long as the contents written down by the investigating officer in the diary is deemed reasonable, a Magistrate can grant the remand order against the accused without considering his or her background before the existing remand application[27].

This becomes a concern because an accused who had just finished a remand at a district police station today could be transferred to another district police station tomorrow, as long as the investigating officer from the new district police station could present reasonable grounds to the residing Magistrate of the new district that a remand order is necessary. The statutory wordings of Section 28 doesn't require the residing Magistrate to learn about the background of the accused who may have just been released from a remand procedure but had to immediately go for another[28].

Therefore, changes could be made to the current case management system which is the E-Kehakiman or the e-Filing System to include information of the accused prior to the remand application where the Magistrate could see the records of an accused from the initial stage of arrest to the current remand application. With the implementation of the newly added system, the Magistrate could use his discretion under Section 117(4) of the CPC more effectively[29], which

[27] Section 28, Criminal Procedure Code
[28] Jerald Gomez, 'Police Powers And Remand Proceedings' 2 MLJ cxxix
[29] Section 117(4) Criminal Procedure Code

mandates the Magistrate to consider any detention period immediately prior to the existing application. Through this way, any attempts of mala fide successive remand by enforcers or investigating officers through circumventing the Section 117 loophole can be prevented.

This incentive would reflect the current position of practice in the UK, where the Crown Prosecutor Service uses various Electronic Systems such as the Case Management System and CTL calculator which details relevant background and information of the accused, including the initial remand date and CTL expiry dates[30].

Conclusion

Chain remand may assist investigative authorities in completing complex investigations and maintaining public confidence in law enforcement efforts. Though, if the practice persists without amendments or sufficient safeguards in place, it will continue to have the potentiality to infringe the human rights of any accused individuals. The proposed reforms are merely short term and reactive based solutions which does not halt the practise of chain remand in the preliminary stages. Realistically, an overall reform of the Criminal Procedure Code is required, particularly Section 28 and Section 117 and the other provisions surrounding the same issue to make sure that the practice of chain-remand can be ceased more effectively.

[30] Crown Prosecution Service, 'Custody Time Limit Calculator and Ready Reckoner' (The Crown Prosecution Service, 2021) https://www.cps.gov.uk/prosecution-guidance/custody-time-limit-calculator-and-ready-reckoner accessed 15 April 2026.

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