

**A COMPARATIVE STUDY ON LAW GOVERNING INVASION
OF PRIVACY**

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ABSTRACT

This paper looks into the protection towards privacy in Malaysia, specifically physical and territorial privacy. The scope of our research extends to all area of protection that could be attributable to privacy, which include Constitutional Law by virtue of Article 5 and Penal Code through Section 509. The inadequacies of protection granted by the said provisions are illustrated by way of case laws. Despite there is an implied recognition of the right to privacy, there is an inconsistency between judgment and the imposition of punishment. Further, in most cases, the punishment proves to be disproportionate to the humiliation suffered by the aggrieved party.

In order for us to search for the best solution, extensive discussion and comparisons with the protection of other countries are provided in Chapter 3, which include countries like Singapore, Brazil, South Africa and England.

This paper also discusses the relevance of the 2010 Personal Data Protection Act which has been purported to protect informational privacy, so as to determine whether it also applies to other forms of privacy.

The final chapter provides a discussion on the most viable are of law to protect privacy, taking into account both civil and criminal protection. In light of the discussion, after balancing the pros and cons of both areas, we are able to say with certainty why criminalizing invasion of privacy is the best option. Apart from that, we simulate 2 provisions that should be incorporated into the Penal Code to solve the inadequacy.

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CHAPTER ONE

INTRODUCTION

1.0 Research Background

The emergence and advancement of technology, specifically the vast access provided by the internet, had created sufficient room for exploitation by members of the society for personal satisfaction. Unfortunately, few irresponsible individuals had taken advantage of the situation by invading others of their liberty and personal domain, of which without the permission of the victims. This results in bulk of cases of privacy intrusion. As the number of cases is on the rise in Malaysia, the existing laws are not sufficient to cater to the need of the victims of the crime or to serve a just and rightful punishment to the wrongdoer. Therefore, the scope of our study is primarily on the privacy of person per se in Malaysia's legal perspective. We shall be focusing on two aspects of privacy, namely (1) physical privacy and (2) territorial sovereignty. The problem with existing law is as follows.

Firstly, the provisions in local statutes are not uniform. In the case of *Sivarasa Rasiyah v. Badan Peguam Malaysia & Anor* [2010] 3 CLJ 507, the court refer primarily to Article 5 of the Federal Constitution on Liberty of a person for private life, where Gopal Sri Ram FCJ interpreted the right of personal liberty to include right to privacy. On the other hand, the court referred to Section 509 of the Penal Code on intrusion of privacy in the criminal case concerning local actress Nasha Aziz. The non-uniformity of legal principle to govern the matter has prevented the formation of a proper binding precedent in deciding cases of privacy invasion.

Secondly, even the only present provision to govern this matter is vague and unclear in nature. This can be seen on the wording of Section 509 of the Penal Code that only act which insult the modesty of a person will be actionable. Furthermore, the wording of the provision is vague in the sense that "intrudes privacy of a person" is not defined or illustrated by the code. Question arose as to the extent of intrusion, the outcome that the law expect from the intrusion and whether the mere act of