

RIGHT TO COUNSEL

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PREFACE

The right to counsel was not an intended topic of my project paper until I came across an interesting article by Tan Sri Mohammad Salleh bin Abbas, title "Right of an arrested person to consult counsel". When the project paper was imposed on every final year students, and upon spotting the article by Tan Sri Mohammad Salleh Abbas, it give me the interest and idea to write on this topic with the intention of highlighting the adequacy or otherwise of laws pertaining 'Right to Counsel' and also to see the extend and developments, problems as well as to look into various ways of over coming problems faced by the arrested person to consult his counsel.

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CONTENTS

Preface

Acknowledgements

Lists of Cases

Table of Statutes

Chapter I

	<u>Pages</u>
The nature of the problem	1 - 2
Purpose of the study	3
Research methodology	3
Limitations	4 - 5

Chapter II

Introduction	6 - 16
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Chapter III

During Investigation

1. Introduction	17
2. Grounds to refuse visit by counsel	18 - 21
3. Police Interrogation	21 - 27
4. Conclusion	27

CHAPTER 1

PRESENTING THE PROBLEM

1. The nature of the problem

The history of the consideration of human rights may be described as the history of the development of man. It has been the story of man's emergence from a stage of ignorance and lack of concern about his fellowmen to a stage of high concern. This project paper is written in furtherance of this history. Here the main problem to be discussed is on human rights. By now it must be noticed that a Constitution which 'guarantees' or 'protects' human rights does so in such statements as 'no person shall etc.' or something to that effect.

Many philosophers think that 'rights' are relative to the society in which they exist or assumed to exist. Burke, in his, 'Reflections of the French Revolution', cast scorn on the whole notion of natural rights, that is, rights belonging to all men at all times as part of their nature.

Part II of the Malaysian Constitution relating to fundamental liberties of the individual is an important part of the basis of the constitution. Like all written constitutions of democratic countries the Malaysian Constitution protects and guarantees with certain exceptions the liberties of the people.

One of the virtues of a written constitution is to express protection or guarantees which may be given by the constitution to citizens and other persons. Here different countries may differ in their protection of individual rights and liberties. The question here is whether the 'right' has been provided equally and fairly?

In considering these questions, it seemed to us that a common nationality was the basis upon which a unified Malaysian nation was to be created and that under a democratic form of Government it was inherent that all the citizens of Malaysia, irrespective of race, creed or culture, should enjoy certain fundamental rights including equality before the law. We found it difficult, therefore, to reconcile the terms of reference if the protection signified the granting of special privileges, permanently, to one community only and not to others. According to Tunku Abdul Rahman Putra Al Haj:

"in an independent Malaysia all nationals should be accorded equal rights, privileges and opportunities and there must not be discrimination on grounds of race and creed..."