

**RIGHT TO LEGAL REPRESENTATION: A STUDY ON THE  
LEGAL AID DEPARTMENT IN RELATION TO  
CRIMINAL CASES**

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The students/authors confirm that the work submitted is their own and that appropriate credit has been given where reference has been made to the work of others.

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## ABSTRACT

The Legal Aid Department is administered by the Legal Affairs Division in the Prime Minister's Department and it is funded by the government under the Legal Aid Act 1971. The department provides the service of representing the applicants pro-bono in civil and criminal matters but unfortunately, its representative power in criminal matters is limited, showing that it does not comply with Article 5(3), which is right to legal representation, Article 8(1), which is equality before the law, and also the rules of natural justice.

Thus, this project paper aims to analyze the Legal Aid Act 1971 on the limitation of the Legal Aid Department's representative power especially in criminal matters. Besides that, from the project paper, it will also suggest appropriate amendment to the Act on matters relating to representation made by the Department.

From the research done, it suggested a few recommendations such as amendments to the Legal Aid Act 1971, having one autonomous body, broader scope of representation, having law school clinics, broader allocation of fund by the government and alternative dispute resolution.

In the final analysis, it can be concluded that the limited jurisdiction of the Legal Aid Department especially in criminal matters is insufficient to exercise the right of legal representation under Article 5(3) of the Federal Constitution. Thus, it is hope that the suggestions and recommendations which are stated here can be applied in order to make sure that justice can be uphold.

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# CHAPTER ONE

## INTRODUCTION

### 1.0 Introduction

Malaysians are protected under the fundamental liberties listed in Article 5 to Article 13 of the Federal Constitution. Among the fundamental liberties is the right to be represented as stated in Article 5(3) of the Federal Constitution. Article 5(3) provides “Where a person is arrested, he shall be informed as soon as may be of the grounds of his arrest and shall be allowed to consult and be defended by a legal practitioner of his choice.”<sup>1</sup>

Meanwhile, Section 28A (3) of the Criminal Procedure Code 1999 provides that where the person arrested wishes to communicate or attempt to consult with a legal practitioner of his choice, the police officer shall, as soon as possible, allow the arrested person to do so.<sup>2</sup>

Surprisingly, many Malaysians are not aware of this right. This can be seen when the Bar Council had reported that 95 per cent of those who are remanded, which is more than 500 000 accused persons, appear in court without a lawyer.<sup>3</sup> Most of them who are migrants and juveniles are facing financial constraints and cannot afford a lawyer.<sup>4</sup> As a solution, they refuse to claim trial and thus plead guilty, thinking that it

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<sup>1</sup> Federal Constitution at art 5(3).

<sup>2</sup> Criminal Procedure Code 1999 at s 28A(3).

<sup>3</sup> “For The Majority, Justice Is Costly”, *New Sunday Times* 30 March 2008 at 6.

<sup>4</sup> *Ibid.*