

Essay on right to counsel

Law, Justice



The right to counsel is a fundamental right provided by the Sixth Amendment to ensure a fair trial of the accused. The Sixth Amendment states that accused shall enjoy inter alia the rights of the assistance of a counsel for his or her defense. For several years in the United States of America, this right only applied to capital offenders accused by the Federal Government and not the States. It was until the year 1963 that this position was changed in the celebrated case of Gideon v. Wainwright. This case was heard up to the Supreme Court at Florida which reversed the traditional application which had limited the application to the federal government only.

Ideally this right whether provided privately or by the state, remains essential not only as a matter of right but also as a matter of natural justice. It enables the prevention of a miscarriage of justice. The latter is more likely to occur when a lay person defends himself without the assistance of counsel. This submission concurs that the right to counsel is a choice and can be waived. However, it submits that such a waiver ought to be seen in the context of meeting the ends of justice. Consequently, lay accused persons should not readily be allowed to waive their rights.

It is in order for the courts to approach the waiver issue with reluctance and hesitation. This submission observes that while accused persons may seek to enjoy this waiver right, often, it is a legal gimmick that would allow them (accused persons) escape liability from the higher courts. Courts should, therefore, decline to allow for the exercise of the waiver unless the reasons adduced are compelling.

References

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