KDU Law Journal
General Sir John Kotelawala Defence University, Sri Lanka

Volume 03 Issue I
March, 2023
ISSN 2783 - 8870

Merits and Demerits in the Adversarial Criminal Justice System: With Specific Reference to Sri Lanka

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Abstract

The core objective of the criminal justice system is not only to deliver justice for involved parties but also so to balance the rights of individuals with the rights and interests of society. At the same time, public visibility of fairness, justice, and respect for everyone's rights is vital. Since Sri Lanka is a Common Law-influenced country, the criminal justice system is based on the adversarial system of justice, as contrasted to the inquisitorial system. As a result, in the adversarial system of criminal justice, the parties act independently and are responsible for revealing and presenting the evidence before a judge or jury throughout a passive and neutral trial. In contrast to the adversarial system, an official body that acts as a judiciary and gathers evidence for and against the accused is in charge of discovering the truth in an inquisitorial system. Though, there are practical and theoretical distinctions between inquisitorial and adversarial systems of justice; discussions remain as to which is better than the other. In order to do that, there is a discussion that is invariably valid as; there are merits and demerits in the adversarial system of criminal justice followed in Sri Lanka.

Keywords: *Merits & Demerits, Compare & Contrast, Adversarial system, Inquisitorial system, Sri Lankan Criminal Justice mechanism*

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Introduction

In his article *"The Criminal Justice System,"* L. Brooks Patterson states that "*The criminal justice system is exactly what the name implies: justice for the criminal."*[1] In order to do that, the function of the "criminal justice system" shall deliver justice for all, by prosecuting suspects before the competent courts based on evidence thereby convicting them if they are [2,3]

The legal system is basically formed through a very complex mechanism that was impacted by different cultural rituals and customs. Accordingly, with the social expansion, the criminal justice mechanism is also based on numerous structures. Emphasizing the above fact, in his book "Legal Systems Theory", Rosen Tashev states that, "the two foremost legal systems that have served as replicas of almost all the jurisdictions around the world are the civil/inquisitorial system continental and common/adversarial system Anglo American Law Systems.[4]" However, "comparative research of criminal justice systems is still in its infancy"[5] Among these two main legal systems, the law of the criminal procedure in Sri Lanka relies on the Adversarial system. Confirming the above fact, Pro. G.L. Peiris states that; "A basic feature of a regular criminal proceeding in Sri Lanka is the adoption of the "adversary, as distinguished from the "inquisitorial."[6]

The ground onBentham's Principle of Utility, as Mario Gomez pointed out, utilization and fairness of the criminal justice system could be assessed by the nature of the response from the justice system and the capacity to

[1] L. Brooks Patterson, "The criminal justice system is exactly what the name implies: justice for the criminal" (Detroit College of Law at Michigan State University Law Review,1995-1998)
[2] Ibid.
[3] Ibid.
[4] Rosen Tashev, "Legal Systems Theory" (Sibi,Sofia,2007) P.420
[5] Damaska, Mirjan, "Evidentiary Barriers to Conviction and Two Models of Criminal Procedure: A Comparative Study" <http://hdl.handle.net/20.500.13051/831> Accessed on 10/11/2022 at 12.32 PM
[6] Pro. G.L. Peiris, "Human Rights and the System of Criminal Justice in Sri Lanka" <http://repository.ou.ac.lk/bitstream/handle/94ousl/943/Human%20rights%20and%20the%20system%20of%20criminal%20justice%20in%20Sri%20Lanka%20%20by%20G.L.%20Peiris%20%281%29.pdf?sequence=1&isAllwed=y> Accessed on 11/11/2022 at 11.23 AM

access justice mechanisms for the greatest number of people.[7] However, the question that arises from the above fact is; do the two main systems above mentioned correspond with the utility and fairness of criminal justice? However, as a reply to the above question, Pro. G. L. Peiris stated with the criticism that, "Contemporary experience, especially in countries of the Third World, demonstrates the intrinsic value of the 'adversary' system of criminal justice for the purpose of achieving minimum standards of equity and fair dealing in criminal proceedings."[8]

The Adversarial and Inquisitorial system in criminal procedure

With special reference to the adversarial system, Ian McLeod states, "under the English Law the court procedure is Adversarial for all the practical purposes. That is to say when it is produced the facts and submissions relate to facts before the court, the court declares the wining party. Holding an investigation regards to the indictment, is not a duty of the court."[9]

The adversary procedure in common law either party makes their case, calls their witnesses, and questions them.[10] The civil law non-adversary trial resembles an official investigation presided over by the judge; whatever evidence he chooses to consider becomes his evidence, or rather the evidence of the court.[11] Accordingly, there is strictly speaking no "prosecutor's case" and there are no "witnesses for the prosecution." The bulk of questioning comes typically from the bench and it is the presiding judge who begins the examination of witnesses."[12]

When it comes to the modern scenario, disparities between the criminal justice procedures of both legal systems are lodged for limited approach. However, according to Rosen Tashev, disparities between both legal systems, could be evaluated under three different regimes; namely,

[7] *Supra,*4
[8] Ibid.
[9] Ian McLeod, "Legal Theory: Key Legal Concepts in Law" (2006) P.10
[10] Ibid.
[11] *Supra,*2
[12] Ibid. P.423

different Legal sources followed by, relationship between the judiciary and prosecution, the role of the judge in the trial and the presence of the jury.[13]

The main cause for the distinction of the two main legal systems is that the civil law procedure, characteristic for jurisdictions in Continental Europe, reverberations the original Romanic law whilst the common law, applied mostly in England, its former colonies and the US, heads another direction.[14] The primary source of the law in the Continental legal system is the codified legislation…the civil codes while legal custom and precedents have minor significance. The core principle of procedures is from the abstract to the particular/specific courts base their decisions on certain cases. Judges construe the law but they do not make it.[15]

However, in contrast, for common law systems, the legal precedent constitutes the primary source of law. Accordingly, interpretations of the judiciary are the actual designers of legal norms that are applied cases. [16] In England and Wales the law has never been codified has been evolving progressively. Therefore, John Hatchard emphasized that the sources of procedure are various such as legislation, judicial decisions, administrative guidelines and practice directions.[17] Due to the impact of the European Court of Human Rights, Western Europe is moving toward a more uniform legal system.[18] However, the establishment of "democratic" forms of criminal justice usually defined in terms of the adversarial system has long features in Sri Lanka as the influence of the consequences of global foreign policy objectives.[19]

[13] Ibid. P.423
[14] John Hatchard, "Comparative Criminal Procedure" (The British Institute of International And Comaprative Law, London,1996) P.23
[15] Ibid.
[16] Ibid. P.26
[17] Ibid. P.27
[18] Himalee Kularathna,"Judiciary-Under the Anglo-American and Continental Legal Systems." (Hulftsdorp Law Jornal, The Colombo Law Socitey, Vol:1, 2014) P.300
[19] Ibid.

The disparities between the two legal systems have influenced the different functioning of the judiciary, implicit as an instrument for the administration of justice, composed of a system of courts, judges, magistrates, and adjudicators.

The comparative analysis of the French and English criminal justice systems

The assize court in France hears cases involving the most serious crimes, including murder, rape, significant narcotics offences, and armed robbery.[20] The court is comprised of three professional judges and a jury of nine people who were chosen at random from the voter list. The correctional court hears most serious crimes, less serious drug cases, theft, and fraud.[21] The correctional court, which takes the place of the assize court, is presided over by three judges but without a jury.[22] The police court is where small crimes are tried, and there is just one judge presiding over the proceedings.[23] In the court system of England and Wales, it is the Crown Court that hears the most serious offences. The court is composed by a judge and a jury of twelve members.[24] A High Court judge hears the most important matters; circuit judges hear the others. A lower-level court called the Magistrates Court hears cases involving minor offenses in front of three lay judges.[25]

At first glimpse the court systems of England and France seem very comparable; yet, they considerably vary when the role of the judge is examined. The procedure of selection and appointment of judges are different in these two legal systems. In that sense, the Continental law countries are reflected as 'bureaucratic'. France, as a representative of the civil law practice, has a career judiciary; the *magistrature* who is entering into the profession by means of competitive examination

[20] Ibid.P.301
[21] Ibid.
[22] Ibid.
[23] Ibid.
[24] Ibid.
[25] Ibid.

(*concours*), extensive training at the national school, the *Ecolenationale de la magistrature*[26]. This selection procedure and training qualify the judges to perform several judicial functions at various points of their careers.[27]

On the other hand, in Common Law countries the "professional" model is more applicable. Therefore, an informal training through legal practice is preferred, rather to formal training. Judges are nominated from the ranks of experienced and skilled members of the legal profession.[28] Therefore an elite judiciary with no internal hierarchy and no need for promotion is formed.[29] John Bell emphasized that in England, no specific diploma is required for the position of a High Court judge. Suitability for an appointment as a full-time judge was based on substantial experience in the legal profession, a good reputation and a good performance as a part-time judge.[30]

By criticizing the Adversarial system, Richard Frase stated: Judges in the United States at a given court level may aspire to higher judicial positions, but there is little assurance that their ability and performance level will be recognized by the politicians or advisory committees responsible for filling these positions.[31] There are fewer systematic records of judicial performance, such as disposition rates and backlog, appellate reversal rates, forced recusals, and complaints received from parties or witnesses. Moreover, many of the most desirable higher positions are filled not from the ranks of experienced jurists, but the attorneys with political connections with little or no judicial experience. Even where promotions are guided by performance rather than by politics, the bar tends to control advancement decisions and other judges have little input.[32]

[26] Ibid.
[27] Ibid. P.302
[28] *Supra,*10: P.428
[29] Ibid.
[30] John Bell,"Judiciaries within Europe:A Comparative Review"(Cambridge University Press, Cambridge,2006) P.123
[31] Richard Frase, "Comparative Criminal Justice As a guide to American Criminal Law Reform" (California Law Review, 1990) P.78
[32] *Supra,*29

Further to that, nonetheless, many other American jurisdictions still have only minimal judicial training requirements; as a result, the quality of their judges is only as good as their selection process. And the quality of judges determines, in large measure, the quality of justice. This is particularly true in the trial courts, where many decisions are legally or practically non appealable.[33]

Accordingly, it could be argued that in the Anglo – American system the judicial legitimacy originates from the elite professional itself, in the Continental model; the nature of authority is state-centered, fixing the sources of legitimacy in accordance with its own notions.[34] In addition , it is more evident that the adversarial system is more likely to base on traditional practices rather when it comparing to the Continental model.[35]

In Continental judiciaries there is no such exercise as "coaching" the witnesses or experts by lawyers, preparing them for potential interrogations, as it is in the Anglo-American countries. In brief, the contrast in common law courtrooms the judge is neither that vocal nor active. The judge seems detached while the counsel is dynamically cross-examining witnesses, and possibly the defendant. The mere involvement of the judge throughout this course is to safeguard that the advocates behave themselves, to protect the jury's independency and impartiality from influence inside the courtroom and to evade inappropriate approaches to arrest.[36]

The judge has the right to interrogate both the witnesses and the defendant, which is used extremely rarely in the common law tradition. Similarly, the court has no relationto the nomination of experts. It is exclusively an obligation of the parties and their attorneys to select experts and witnesses in order to maintain their cases.[37]

[33] Ibid.
[34] Ibid.
[35] Ibid.
[36] Ibid.
[37] Ibid.

The contrasting balance of power in the conduct of the trial procedures is fairly related to the different philosophies assisting the two legal representations. The adversary procedure, common to the Anglo-American system, relies on the principle that truth is determined through the investigation and representation of facts by the two opposite sides of the issue . On the other hand, in civil law legal practice, the truth is best revealed by a competent judge that will direct the demonstration of evidence and will balance the views of the two parties.[38]

However, some legal experts point out that there is no adversarial or investigative distinction in any criminal court system in the real world, making this theoretical distinction obsolete in the present context. Thus, although an adversarial court system in which cases are decided by a jury is in place in England, to a certain extent, it reflects conditions compatible with the inquisitorial court system. Accordingly, the judge will give the sentence based on the final decision of the case.[39] Also, in the French judicial system, the inquisitive criminal court system is more concerned with the oral presentation of facts and the opinions expressed by a jury in certain trials, although it portrays a nature that conforms to the system.[40] Also, the dual roles of judges in this criminal procedure require the participation of lawyers in trials.[41]

In inquisitorial criminal justice system, a very extensive and central place is centered on the role of the judge in a trial, but in adversarial criminal justice system, the judge is a mere arbiter of the contest between the plaintiff and the accused. Also, in the investigative criminal justice system, after preliminary investigations, the matters related to the relevant investigation are presented to other judges and then the accused, witnesses and persons with professional skills are questioned respectively.

[38] Ibid.
[39] Mireille Delmas-May & J.R. Spencer, "European Criminal Procedure" (Cambridge University Press, 2005) P.227
[40] Ibid.
[41] Ibid.

But in the adversarial court system, there may be very important facts of the case that can be hidden from the judge in the criminal procedure. Especially in this judicial system, in all the hearings based on the facts presented by the two opposite parties, the plaintiff and the defendant, the witnesses are initially taken and then the plaintiff party and finally the defendant party. Thus, there is an emphasis on protecting the rights of the accused in this criminal justice process. According to Hein Kotz, a South African lawyer, "The prosecutor can recommend a probable sentence, but the last word is always given to the defence counsel and the defendant."[42]

Also, in the investigative criminal justice system, there is no presence of attorneys who are prepared and trained for in-depth questioning of witnesses and professional individuals as in the adversarial criminal justice system. Also, in this adversarial criminal court procedure, the judge plays a passive role, and the judge is kept abstracted until the witnesses and the accused are subjected to extensive cross-examination by the lawyers in the court. As this judicial system expects only the mere participation of the judge, thus the problem arises as to whether the judge actively contributes to the subject of criminal justice. However, the lawyer named Hein Kotz points out that although the judge has the power to play an active role in the judicial process by cross-examining the witnesses and the accused, it can be seen in this judicial system that judges use this power only in extremely rare cases.[43] Accordingly, this Court cannot choose who should be the professional persons and who should be the witnesses and it should be done by the parties concerned in the case in order to maintain their case.[44]

Thus, in the adversarial criminal court procedure, the truth is determined based on the facts and examinations presented by the opposing parties, but in the investigative criminal court procedure, the truth is fully

[42] HeinKotz, "The Role of the Judiciary in the Court- Room: The Common Law and Civil Law Compared" (Journal of South African Law, 1970) P.35
[43] Ibid.
[44] Ibid.

determined by the judge and thus he balances the opinions between the parties. Conduct is a positive aspect of the investigative criminal justice process. But, another negative situation seen in the investigation of England's adversarial criminal court procedural law is that, even if a document is presented to the judge that shows the facts related to the relevant taxation, it is expected that during the trial, the judge does not have independent knowledge of the relevant legal matters, so the lawyers will inform the judge of the legal situation related to the case. To indicate that it should be explained. But the situation in France is more positive than the system in England.

The situation in England and the United States of America differs from that in France in regard to the taking and identification of evidence. Accordingly, the French courts do not adhere to any strict legal conditions regarding evidence and pay more attention to the value and sufficiency of the evidence than to the corroboration of the evidence. But in the adversarial criminal court procedure, more emphasis is placed on corroboration and exclusion of evidence, and strict legal status and compliance can also be seen in this regard.

Therefore, it can be concluded from the overall legal analysis of the criminal justice procedural situation in England and France that it is possible to identify consistent and contradictory situations in the criminal justice procedural law in the adversarial judicial system and in the investigative judicial system, and that in those situations, each state, as well as that specific criminal justice procedural legal conditions can be identified.[45] Therefore, it is more appropriate to base a more effective approach to the subject of criminal justice on common law and civil law situations, while respecting the essential values in these judicial systems, rather than stating which approach is more successful in criminal justice procedural law.[46]

[45] Ibid.
[46] Ibid.

Furthermore, it would seem that both adversarial and inquisitorial legal procedures should continue to be used to produce fair and just circumstances based on universally recognized human and fundamental rights. Therefore, it may be concluded that "opposing models can hire their differences and transformations in a practice of extension, progress, and advancement of the criminal justice systems in the globe" rather than engaging in "legal dogmatism."[47]

Analysis of the Sri Lankan procedural criminal law's positive approach toward the criminal justice system

A basic focus on the nature of criminal justice procedural law in Sri Lanka reveals that it operates primarily on a prosecution-centered trial system and an adversarial judicial system reflecting an impartial and passive judge, which has become a Sri Lankan legal heritage.[48] However, the criminal justice system in Sri Lanka is basically governed and based on the procedural laws which included the Code of Criminal Procedure Act No. 15 of 1979, Judicature Act No. 02 of 1978, Police Ordinance No. 15 of 1865, Bail Act No. 16 of 1997, and Evidence Ordinance No. 10 of 1988; and the relevant substantive laws which included the Penal Code (Ordinance No. 2 of 1883).

Hence, the latest surveys show that the lowest conviction rate in Sri Lanka's criminal justice system is due to procedural law rather than the substantive weaknesses of substantive law. "The rapid escalation of crime, increasingly committed in an organized manner with violence, impunity and considerable sophistication, thereby resulting in the loss of public confidence in the criminal justice system, has highlighted the need to review the existing criminal justice framework in Sri Lanka. By analyzing the grievous crime abstracts of years 2007 to 2013, it would

[47] *Supra*,17; P.305

[48] In *De Mel v. Hanifa* (1952)1 NLR 433-443: *Gratien J*; has Commented: "It is very relevant to remind ourselves that our Code of Criminal Procedure and the earlier Code which it superseded, were both designed to regulate the process of bringing offenders to justice in accordance with the 'Accusatorial system' which, by the will of succeeding Legislatures, has taken firm root in this country. Indeed, it has long since become part of our heritage.'

create a vivid image of the gravity of this problem."[49] Specifically, the aforementioned report by itself will be confirmed that the criminal justice procedural framework of Sri Lanka has largely lost public trust due to the lack of proportional criminal justice in the systematic growth of crimes. But it is further to be asked if it is really so.

Further, the right to a fair and speedy trial as emphasized in the United Nations Charter of Human Rights and the 1978 Constitution of Sri Lanka is a fundamental requirement of criminal administrative law.[50] A denial of criminal justice is inherent in the delay in a speedy trial. Therefore, in order to prevent and control crimes, unnecessary delays in the criminal justice system should be avoided, while at the same time, the government should focus on limiting the conviction of the accused in the complex burden of proof beyond reasonable doubt and the strict burden of proof in the criminal procedure. Reconsideration is critical to the delivery of criminal justice in Sri Lanka.

In addition, the most important point to be emphasized is that the complainant cannot actively contribute to his case as the state is handling the complaint and the investigations and dealing with it. It can also be argued that this situation, on the one hand, exposes the state's efforts to provide criminal justice, but on the other hand, in the adversarial justice system, it often affects the right of the victim to deal with his case. Thus, it is often appropriate to refer to criminal justice as a condition that is consistent with basic human rights. Therefore, the judge's impartiality and attention to every issue is a must-have situation in Sri Lanka's adversarial judicial system in terms of criminal justice.

Furthermore, when examining the criminal justice system in Sri Lanka, it is revealed that there are problems related to criminal investigations. There is no active contribution of the judge. The problematic nature of

[49] Final report of the Committees which appointed by the Ministry of Justice, Law Reform and National integration to recommend amendments to the practice and procedure in investigations and Court – 2014. P.5

[50] Constitution of the Democratic Socialist Republic of Sri Lanka, 1978, Article 13

this is that the evidence may be destroyed if the relevant investigations are not conducted within the specified time. Furthermore, there is a risk of missing forensic evidence such as fingerprints, bloodstains, especially due to lack of attention. Also, emphasizing the distant relationship between forensic science and police investigations, it can be said, "the police fail to work in collaboration with forensic experts. As a result, forensic evidence is not collected for use against the offender. The police may send cases to the court even when the evidence is insufficient for reasons of expediency."[51]

Thus, since the police perform a very wide task in the execution of criminal justice, they must act on their broad capabilities. But in the Sri Lankan criminal justice system, the challenges in the subject of the police, especially the non-updated criminal investigation equipment of the police; therefore, it is very important to develop a high standard in this field that adapts to modern technology. Furthermore, the imbalances in the police administration and especially the police officers in conducting criminal investigations, the investigation malpractice situations by not being directed to a proper training mechanism, create a unique inhibiting situation in criminal justice.

According to the adversarial judicial system operating in Sri Lanka, certain negativity is also highlighted regarding the plaintiff party. In particular, "in Sri Lanka, the prosecutor has absolute authority to determine whether a case should be sent for trial or not."[52] That is, the right of the plaintiff to be tried is fully emphasized, but in Sri Lanka, the file related to the case filed by the police is referred to the Attorney General's Department (for advice) and this process takes some considerable time. Also, the State Counsel is mostly given instructions related to maintaining the high standards of police investigations in the case concerned, thereby creating a greater possibility of delays and weak litigants appearing in court.

[51] *Supra,*48
[52] *Supra,*5

Also, there may be a waste of court time due to prosecution who is presented without proper evidence, and if a situation arises such as the death of witnesses or damage to their memory due to delays in the river hearings, there is a greater chance that the prosecution's right to justice will be damaged. Also, the tendency of witnesses to refrain from testifying due to possible harm to their lives, as well as the fear of crime victims to testify and the retraction of statements given, were common criminal justice problems seen in Sri Lanka. But, it can be said that the legal structure of Sri Lanka has reached a positive approach by establishing the rule of law regarding the protection of the rights of crime victims and witnesses through the enactment of the Assistance to and Protection of Victims of Crime and Witnesses Act, No. 04 of 2015.[53]
It is also possible to identify the procedural weaknesses in the adversarial justice system of Sri Lanka, i.e. the weaknesses in the relevant legal framework and the judicial system. Especially in a statement made by a criminal accused to the police, his guilt is proven, but it cannot be used as evidence against him. Also, according to Section 110 of the Criminal Procedure Code[54], even though the police have the legal ability to obtain fingerprints, handwriting and blood samples of an accused, when the police do not have the relevant technical equipment, difficult situations may arise in proving the case of the prosecution. Also, through the amendment of the Code of Criminal Procedure Act No. 11 of 1988[55], it has been sought to avoid unnecessary delay on the basis of unnecessary evidence, in case of non- summary cases even though the Section 420 (1) of the Code of Criminal Procedure Act No. 15 of 1978 has not concentrated that issue.[56] Confirming that fact, the members of the committee that drafted this bill indicated," Provides for the elimination of unnecessary evidence give effect to unnecessary delay. Non-Summary Inquiries ("NSI") should be dispensed with, having regard to several concerns voiced by representatives of the police and the Judiciary

53 Victims of Crime and Witnesses Act, No. 04 of 2015

54 Code of Criminal Procedure Act No. 15 of 1979, Section 110

55 Code Of Criminal Procedure (Amendment) Act, No. 11 of 1988

56 Code of Criminal Procedure Act No. 15 of 1979, Section 420 (1)

including members of the Official and unofficial Bar."[57]

In ***Shaw v. Director of Public Prosecutions***[58], Lord Viscount Simon stated that undue delay has become commonplace in our courts, resulting in a rapid erosion of public confidence and dignity.

However, in reference to Article 13 of the Constitution of 1978, this further lays more weight on the protection of the rights of the accused, but that every person has the right and freedom to be free from arbitrary arrest, detention and punishment. Furthermore, it prohibits the imposition of retroactive penal laws.[59] Further, Article 13(1) secures to individuals the right to know the reason for their detention, while Article 13(5) provides that the burden of proving a special case may be shifted by law to an accused person on a presumption of innocence. Rightful protection is also confirmed in the Constitution which is the basic law. [60]

Also, the prosecution does have the burden of establishing the defendant guilty, which is known as the "golden thread" of the English criminal justice system. It can therefore be argued that this legal scenario in the criminal justice system is not particularly favourable because the burden of proof lies with the prosecution. On the other hand, it means that the accused is considered innocent until the prosecution establishes that the pertinent accusation is beyond reasonable doubt. Accordingly, *John Farrar and Anthony M. Mugdale* points out, "the law has developed heavily on the concept of individual liberty."[61] **Woolminton V. Director, Public Prosecutions**[62] case decision states that this should be the legal policy of criminal justice in this judicial system. However, in Sri Lanka according to this situation, it can be argued that there is a violation of the right to universal justice as indicated by Article 12 because the question

57 *Supra*,51

58 *Shaw v. Director of Public Prosecutions* (1962) Ac 220

59 Supra,49

60 Ibid.

61 John Farrar and Anthony M. Mugdale, "Introduction to legal method" (London : Sweet & Maxwell, 1984)

62 *Woolminton V. Director, Public Prosecutions* (1935) AC 462 HL (E)

arises whether the rights of the prosecution are protected by the basic law. Furthermore, the Ellenborough Dictum emphasizes that only when the prosecution presents a clear and prima facie case against someone accused of a crime can the defence offer some explanation for his innocence. In ***Rajapakshe V. Attorney General*** [63]case, Justice Dr Shirani Bandaranaike has stated; the application of the Ellenborough Dictum in the criminal justice system in this country is represented as an opportunity to prove the innocence of the accused, but on the other hand, it can be shown as an exception to the basic principle that an accused person has no obligation to prove his correctness. Thus, this theory seems to balance the positive and negative situations.

According to the adversarial judicial system operating in Sri Lanka, the nature of the criminal justice procedural law, and the positive approach shown in the execution of criminal justice, it will be clear that it is based on negative conditions beyond the positive.

However, the recent amendment of the criminal trial procedure by introducing a pre-trial system[64] to reduce the existing delays in the High Court trials can be pointed out as a trend towards an inquisitorial approach. In particular, it can be further said that the existence of a hybrid system is very important because the methods implemented in the public policy structure in Japan and the Scandinavian countries to control the number of crimes in their country can be adapted to the Sri Lankan criminal justice system.[65]

Among the crime prevention strategies in the Japanese criminal justice system, which is particularly practical, there is strict control over criminal relics and citizen participation is used to prevent crime. Also, adapting to a more positive criminal justice system based on globalization, information technology, implementing based on the criminal justice procedures in

[63] *Rajapakshe V. Attorney General* [S.C. APPEAL NO. 2/2002 (TAB)] P.113-151
[64] Code of Criminal Procedure (Amendment) Act, No. 2 of 2022
[65] *Supra,*46

Japan and Scandinavian countries, showing a strong tendency towards inquisitorial systems.[66]

Conclusion: What form of criminal justice system should Sri Lanka adopt in order to be the most efficient?

The legal position that can be clearly seen in the filing of all the above-mentioned facts is that the effectiveness of a criminal justice system is determined by the overall efficiency of all matters of crime prevention, suppression, prevention or management. Thus, Sri Lanka also conducts its criminal justice system in discretionary situations of adversarial justice system; naturally the negative aspects of that system are highlighted in it.

Therefore, it could be stated that, if the differences in the criminal justice procedure operating in the two criminal justice systems mentioned above are narrowed down to a situation where the operation of two separately identifiable systems cannot be seen, then Sri Lanka also should move to a hybrid criminal court with a combination of the same two systems. Access to a justice system is more positive, as more balance can be expected through it.

Accordingly, the adversarial justice system and the inquisitorial justice system are the two types of criminal justice that Sri Lanka should really embrace in order to improve the efficiency of the criminal justice system. And also, it should be simultaneously based on the positive aspects of domestic legislation where criminal justice is successfully handled and fundamental rights and equality are upheld, as well as the positive aspects of international criminal justice concepts and compliance. Therefore a logical conclusion can be drawn by filing all the above facts that it is timelier to turn to a hybrid criminal justice system that is more inclined.

[66] Ibid.