

Munasinghe, Kumudumalee
General Sir John Kotelawala Defence University, Sri Lanka

Paper: Sustainability

Adversarial litigation practice in Sri Lanka: A mechanism for legal professionals to shine with disillusioned clients

There are many instances in society, where people have certain disputes with one another, for example, conflicting claims or rights and an assertion of a right, claim, or demand on one side, met by contrary claims etc. on the other. In such cases, if the parties are unable to settle the dispute among themselves or by an Alternative Dispute Resolution (ADR) method they will straight away step into litigation.

Sri Lanka as a country following the Common Law tradition, the applicable mode of litigation is adversarial. It has been described as being too confrontational, since the cases presented to courts as disputes and trials are regarded as contests of opposing interests.

This study aims to analyze the current and future applicability and relevancy of the adversarial process in the Sri Lankan context, with special reference to whether this system is a really helpful process to secure the rights of the parties in dispute or if it is a system depending on talent, reputation and competence of the legal professionals.

The sample data collection for the study was done by distributing a questionnaire among legal professionals, scholars and the general public from different social segments. The intended outcome of the sample data collection was to get participants' views on the technical and practical aspects of the system. The general public from different sections revealed the ideas prevalent in a non-legal background. The study further compared and analyzed different litigation practices in foreign jurisdictions with that of the Sri Lankan system.

The findings of the study are that the adversarial system is highly criticized and discouraged in many jurisdictions, its benefits largely dependent on the capabilities of legal professionals, less creativity of the judiciary, absence of a reliable mechanism to measure the transparency of the process, and sometimes technical difficulties occurring in securing the rights of the innocent.

Finally, the study suggests learning lessons from the Civil Law tradition's inquisitorial process to develop and correct the Sri Lankan litigation process for the protection of the rights of the citizens, mainly the poor, underprivileged, disadvantaged and marginalized.

Keywords: Adversarial, Legal, Dispute, Inquisitorial, System